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A N  
Historical View  
O F T H E  
C O U R T  
O F  
Exchequer,

And of the KING'S REVENUES,  
there answered.

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*By a late Learned Judge.*

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In the SAVOY:

Printed by E. and R. NUTT, and R. Gos-  
LING, (Assigns of Edward Sayer Esq;)   
for T. Waller in the Temple Cloy-  
sters. M.DCC.XXXVIII.

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THE  
P R E F A C E.

**I**T is a Practice too frequent, as well with Editors as Authors, in their Prefatory Discourses to anticipate the Judgment of the Publick, by giving their own Sentiments, which seldom are founded on a Deliberate and Impartial Examination of the  
A 3      Work;

## P R E F A C E.

Work; but on the contrary arise from Partiality and Self-Interest; and tho' such a Conduct seldom fails to incur Publick Censure, which it most certainly deserves; yet it is not so great an Affront, as affixing Learn'd Names to a Title Page with an Intent to deceive the Publick; for these Reasons the following Sheets, which are supposed to be the Performance  
of

*P R E F A C E.*

of a late Learn'd Judge, must appear in Publick unrecommended by any Name, and stand or fall by their own Merit. The whole that seems to be intended by the Author, is a Concise and Methodical Account of the antient Tenures, and out of them to shew the Rise of Legal Jurisdiction, and principally of the Court of *Exchequer*, which was the first Great Court

# *P R E F A C E.*

of Legal Proceedings,  
with the different Branches  
of Business incidental to it,  
particularly the King's Re-  
venues.

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T H E

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OF THE  
Several CHAPTERS

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*of. Then the Auditor writes on the Tally a Duplicate of the Bill, and expresses the Sum in Notches; and the Clerk of the Pells enters the Bill in his Book; then the Scriptor 'Talliar' reads the Tally, the Clerk of the Pells looking in his Book to see that they agree; and thereon the Chamberlains strike the Tally, i.e. divide and separate it, and giving the Stock to the Party, keep the Foil themselves; and the Bill is taken away and filed by the Auditors. Note •herein the several Cheques of the superior and inferior Exchequer, and the several Officers employed. No Money to be issued on the meer Authority of the Great or Privy Seal. Warrants for such Issues to be directed to and signed by the Treasurer and Chancellor, and entred by the Auditor, who then draws his Bill on the Teller; This Bill is entred in the Office of Pells, on the Pellis Exitus, and goes thence to the Teller, who thereon pays the Money. Page 140.*  
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*and*

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*and thereupon take Commissions Virtute Brevis. He that first informed had the Writ, but neither held the Lands than till a Bailiff was appointed, who thereon became accountable. When the Sheriff has his Patent, two Days are prefixed him to account, i. e. after the Utas of Easter, and after the Utas of Michaelmas, called his Profer Days, when if he fails to appear. 5 l. per diem for 4 Days together is set on his Head; and after the 4th Day an Attachment, Fi' Fac' & cap' in Manus nomine Distictionis against his Body, Lands and Goods, directed to the Marshal of the Exchequer; and such Goods and Profits of Lands are forfeited to the K. as Penalties, and do not go in Discharge of his Account. Note the Reason of this Procedure. See of the Security to answer their Posers, of their Payments and Apposals, and of Totting, Nichiling and Oniing, the Particular of their Accounts. Page 144.*

A N

# Historical View

O F T H E

# C O U R T

O F

# E X C H E Q U E R .

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## C H A P. I.

*Of the King's antient Revenues  
in General, and incidently of  
his great Councils, &c.*

**T**H E *Exchequer* was the Custumier de  
Normandy,  
fol. 102, and  
fol. 61, 62.  
ancient and sovereign Court  
in *Normandy*, to which  
they appealed from all infe-  
rior Jurisdictions; it being the grand  
Court of the Dukes there.

B

There

Basn. Tit.  
Juris, fo. 20.

There is very great Difference amongst the Antiquaries touching the Name. *Basnage*, in his Customs of *Normandy*, derives the Word (*Exchequer*) from the German Word *Skecken*, which signifies to send; because the Court was composed *de Missis in Dominico*, or of such great Lords as were particularly sent for to hold Court with the Seneschal or Steward on any Occasion.

Maddox 109.  
Spel. Gloss.  
Tit. Scac'.

The common Derivation of the Word *Exchequer* is from a chequered Board, on which they play at *Chefs*, and hence a *Chequer*, because in that Game they give *Cheque*; and the Court was so called because they laid a Cloth of that Kind upon the Table, upon which the Accountants told the King's Money, and set forth their Accounts in the same artificial Manner, as in the Cofferers Account is done at this Day.

1 Godf. 228.  
Terraine 50,  
60, 61.

This Court, in *Normandy*, was the sovereign Jurisdiction and Superintendent of all Manner of Complaints from



## the Court of Exchequer.

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from the Bailiffs or Sheriffs; for the Bailiffs or Sheriffs exercised the ordinary Jurisdiction in each Bailiwick through the whole Dutchy of *Normandy*; their Duty was to gather the Duke's Rents in each Bailiwick, and to account for the same in this great Court; here likewise they heard all Manner of Complaints against them, and the Sentences here were final.

This Court was composed of such Barons, Bishops and Abbots, as held immediately of the Duke, and were occasionally sent for to attend the Prince, and they were called in by a Summons to attend the Duke's Pleasure, and such as were called attended the Duke's Steward in taking an Account of the Bailiffs, and hearing Complaints against them.

Basn. 23.  
See Maddox  
Hist. 5, 6. the  
Constituents  
of the *Aula  
Regis*, or K.'s  
Court, Temp.  
W. 1. & W. 2.

*Terraine* says, there were two Sorts of Jurisdictions, the *Fieffal* and *Bailie*.

The *Fieffal* is the feudal Jurisdiction, by the Reason of the Fieffs, that is, where the feudal Lord had Power to do Right to his Tenants upon any

## An historical View of

Complaint or Quarrel, and this reached as far as the Bounds and Extent of the Manor, and to all Quarrels that were moved between the Resiants there.

The Jurisdiction *Bailie* is well defined by *Terraine*.

*Terraine* 59, 60. This was the ordinary Jurisdiction, which from the *Bailees* in *Normandy* was here delivered over to the Sheriff in every County, which thence was called his Bailywick.

The Office of Bailie, as defined, is he that is called the Justiciar of the County, and was established by the Prince or Duke there, to do Justice and Right to the People that were submitted to him, to *guard* the Peace, to decide all Quarrels, destroy Rogues, Homicides, the Burners of Houses and other Malefactors, to *guard* the Rents of the Duke, and to get them in, and deliver back the Pledges that were taken by wrong, and to remove Force, &c.

*Terraine* 48. It is plain by this Description, that the *Bailee*, or Bailiff and Sheriff were  
*Ancient customiere* (56. *fc.* 47.) an

## the Court of Exchequer.

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anciently the same Officer, and that the Sheriff originally had the ordinary Jurisdiction within the County or Bailiwick, though afterwards they appointed Lieutenants and Bailiffs of Counties distinct from the Sheriff; but certain it is, that the highest Justices were those that they called the Masters of the *Exchequer*, and who are now at this Day called the Presidents and Counsellors of the Court of Parliament, and to them it appertained to amend what the Bailiffs or lesser Justices had misdone, and to call in all Things that were withheld from the Prince.

Yet it is to be doubted, whether the *Exchequer* in *Normandy* was formed from the *Exchequer* in *England*, or *England's* from that of *Normandy*; certain it is, that they are very like one unto the other; all the great Ministers, as the Justiciar, Constable, Seneschal, Chancellor and Treasurer, sat in this Court, and such other Barons as were *occasionally* resident or sent for; but as here the greatest Part of the Ba-

The Sheriff is the King's Bailiff for collecting and answering the K.'s Revenue. See Hale of Sher. Acc. 48, &c.

ronage was summoned to Parliament, which was the most eminent Court, so some few were summoned to the *Exchequer*, which was the Court for the private Concern of the Crown; and *therein* the Matters of the Crown Revenue were first dispatched; then all the Complaints were heard against the Crown Officers, which was the Original of the Writs of false Judgment; but this was afterwards turned into another Channel, for the Complainants against the Officers were so many and so great, and the Profits arising by Suits of Law began to encrease so much, that they confined the ordinary Jurisdiction of the Sheriff to the Sum of forty Shillings; and wheresoever it was above that Sum, they were obliged to take out the King's Writ, either returnable before his own Justiciar in Court, or they took out a *Justicies*, returnable before the ordinary Jurisdiction in the County, and a Fine was paid for the Original, according to the Value of the Thing in Demand, and

This respects  
Normandy as  
well as Eng-  
land.

in

## the Court of Exchequer.

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in that Proportion the Amerciament was set at the Judgment; and hence it was that the Sheriff could proceed upon a *Justicies*, although the Sum was more than forty Shillings.

Fitz. Fines and Amerciaments 87, 88. and Bro. Amerciam. 43.

Towards the latter End of the *Norman* Period the Power of the Justiciar was broken, so that the *Aula Regis*, which was before one great Court, where the *Justiciar* presided, was divided into four distinct Courts, *i. e.* the Courts of *Chancery* and the *Exchequer*, the Courts of *King's Bench* and *Common Pleas*.

Madd. 2. 4.

The Court of *Chancery* issued all Originals, whether in Relation to the Revenue, or to civil Justice; for the Chancellor, before the Breaking the Courts into distinct Jurisdictions, had the Custody of the Seal, and therefore issued all Originals returnable before the Justiciar.

Afterwards, when the Jurisdictions were distinguished, the Originals relating to civil Pleas were returnable before the Justices of the *Common Pleas*;

## An Historical View of

but the Originals in Trespass might be returnable into either Court, because the Plea was criminal as well as civil.

But the *King's Bench* themselves made out the Process in criminal Matters, for in this they shared with the Power of the *Chancery*, though the *Chancery* continued to be the Foot and Basis of the civil Jurisdiction; but the criminal Jurisdiction was returned *coram Rege*, and not *coram Justiciariis de Banco*.

The Chancellor put the King's Seal

See Madd. 11.  
a noted In-  
stance of a L.  
Chancellor's  
accounting  
in the Ex-  
chequer,  
Temp. H. 2.

to all Patents, which was the Foundation and Basis of the Revenue; but when any such Patents were sealed, they were estreated into the *Exchequer*, and the Execution issued out of the Court of *Exchequer* for all the Reservations on such Patents; for as the *Chancery* was a Cheque upon the civil Justice by issuing Originals, so likewise it kept the *Foot* and Foundation of all certain Revenues of the Crown, which was estreated into the *Exchequer*,

## the Court of Exchequer.

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quer, in Order to be there gathered and paid in.

Likewise all Fines upon Crimes in the Court of *King's Bench* were to be estreated into the *Exchequer*, in Order to levy such Fines there, or if they were already levied, they were yet to be estreated, in Order that the Clerk of the Crown might account for such Fines so received in the Court of *Exchequer*.

For on the criminal Side, if the Parties were in Court, they might commit them for such Fines, since their Bodies were liable; and so if absent, they might Issue a *Capias* to bring in their Bodies to answer the Fine; for on the criminal Side, the Bodies of Offenders being in Court, or being presumed to be out on good Bail, in Order to answer to such Fines as should be set upon their Offences, the *King's Bench* had Jurisdiction over the Body, in Order to get in such Fine, because the Body was in Court, or a Surety to bring in the  
I Body;

Body; and if such Fines were answered by the Court, they were to be totted by the Clerk of the Crown in the Estreats; but where they were not received by the Clerk of the Crown, they were to go in Process in Manner hereafter mentioned.

See Madd. 11.

As long as the Power of the *Justiciar* continued, the *Aula Regis* was one Court, and only distinguished by several Offices; for all the Offices were united under the *Justiciar*, and he was the Governor and Superintendent of the Courts; but from their Experience of what had been done in *France*, they thought it proper towards the End of the Barons Wars to lay aside the *Justiciar*; for in *France*, *Peppin* and *Hugh Capet* (who were both *Justiciars*) by the mighty Power they acquired by their Superintendence at Court, got into the Throne, and displaced the Possessors thereof.

In *England*, when they had laid aside the *Justiciars*, the several Offices  
were



## the Court of Exchequer

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were by *Ed. 1.* broke into distinct Courts, and the great Officers were so placed as to be a Cheque one upon the other; therefore the Chancellor made out the Original Writs, and the Justices of the Bench proceeded thereon to Justice and Execution, so that the *Chancery* was a Controul upon the *Common Pleas*, and likewise upon the Justices in Eyre, for they could proceed no farther than the King's Writ gave them an Authority.

Indeed the *King's Bench* had the Sovereign Jurisdiction in criminal Matters, but that was ambulatory with the King, and had no Cheque nor Controul but from the King himself, for the only Controul of Justice was the Mercy of the King, but in all foreign Counties there was no original Jurisdiction of the *King's Bench*, but there were Justices in Eyre appointed; and afterwards Commissioners of *Oyer* and *Terminer*, and general Gaol-Delivery, to dispatch the Business in all foreign Counties, so that on the cri-

iminal

Note; Justices in Eyre were first appointed 22 H. 2. See Madd. 13, &c. and Dugd. Chron. Series, p. 3.

## An Historical View of

minal Side there could be no Cheque nor Controul but the King himself; but in the Matters of the Revenue the Chancellor and Treasurer had the Cheque and Controul upon one another, for the Chancellor was appointed to make out all Grants and Patents for Lands and Tenements; for no real Estate of Land was to be parted with by the Crown without the great Seal; but then the Rents of such Tenures were to be accounted for before the Treasurer; and so he by Patent was to grant all real Offices, but such Officers were Accountants at the Court of *Exchequer*. And the same Sort of Cheque was created by *Ed. 1.* in the Court of *Parliament*, for the *House of Commons* was designed as a Cheque to the Power of the Lords.

### AD D E N D U M.

Note; It appears from King *John's* Charter, and many other undoubted Authorities, That the Commons were

## the Court of Exchequer. 13

a constituent Part of the Parliament of *England*, separate from the Lords long before *Edward* the 1st's Time. King *John*'s Charter runs thus, *Escuage* (or Aid to the King) shall be Taxed as formerly, (*i. e.* by Parliament). No *Escuage* (or Aid) shall be set, except for redeeming the King's Person, making his eldest Son a Knight, and *one* Marriage of his eldest Daughter; and for this there shall be only reasonable Aid, and in like Manner shall the Aids of the City of *London* be; and for the assessing (*i. e.* granting) of *Escuage*, we will summon the Archbishops, Bishops, Abbots, Earls and greater Barons of the Kingdom, specially by our several Writs: (This constituted the House of *Lords*, and then for the *Commons* it follows thus;) And we will cause to be summoned in general by our sheriffs and Bailiffs, all other our Tenants *in Capite*, (*i. e.* to grant and assess those Aids in a Free Parliament,) To meet at a certain Day after 40 Days at least, at a certain

See Bacon of Government, lib. 1. p. 277. and the Preface or Conclusion of l. 2.

Note; the  
Commons  
the King's  
Councillors  
as well as  
the Lords.

certain Place, and we will set down the Cause (of such Summons) in all our Writs; and the Matter at the Day appointed shall proceed according to the Counsel of those (Lords and Commons) that shall be present, although all that were summoned do not come; and we will not that any Man take Aid of his Freemen, unless for Redemption of his Body, making his eldest Son a Knight, and *one* Marriage for his eldest Daughter, and this shall be a reasonable Aid only.

And Note; This Charter of King *John*, was in Effect only a Revival of a former Charter of King *H. 1.* whereby he restored the Confessor's Laws and the old *Saxon* Liberties, which permitted no Freeman to be taxed or tallaged without his own Consent. See *Matt. Paris, Annis 1214, 1215.* and the Stat. 25 *E. 1. c. 6.* 34 *E. 1. c. 1.* *Westm. 1. c. 36, &c.*

C H A P. II.

Of Ancient Demeans, and  
Tenures *per Baroniam*, &c.

TO understand the Revenue and Business of the ancient *Exchequer*, it is necessary to consider that the principal Regal Revenue anciently arose from the Lands and Tenements granted by the King, and they were either *Terræ Dominicales*, the Demefne Lands, and are so mention'd in *Domesday Book*, under the Title of *Terræ Regis*; the Tenants whereof were anciently to maintain the King's Table, and had their Residence on, and Living out of the King's Lands, rendring their Corn, Sheep, Oxen, and other Produce of the Land itself to the King; but because this was cumbersome to deliver in Specie, they came afterwards to another Method, which was by Assessment of those Demefn Lands,

See Hale of Sheriffs Accounts, p. 31. and Gervas de Tilbury there cited.

according to the Value and Produce thereof, and the King's Necessities, and this *Tallage* was settled by Justices, who went by the King's Orders and overlooked such Lands; and made the Assessment, and therefore the Title is *de Tallagio Dominicorum Regis per Galfridum de Luci & Socios suos*; frequent Examples of this are to be met with in *Maddox* 483-4-5.

These Tenants being the King's Villeins were thus taxable by the K.'s Justices; but otherwise were free from all Suit and Service to any Court whatsoever except their own, that so they might mind the Business of the King's Husbandry, and be the better able to supply the King; these Supplies when paid in Money, were called Gifts, *Dona Assize, Redditus Assize, &c.* but most frequently *Tallagium*, and were of two Sorts, *viz.*

See Hale's of  
Sheriffs Ac-  
counts, 38,  
39, &c.

First, What were gathered by the Sheriff; and secondly, such as were gathered by other great Persons, that had many of them in their own Hands,  
and

# the Court of Exchequer. 17

and therefore paid them themselves into the *Exchequer*; and these receiv'd the Acquittances, such were the Tallages of the Cities, who appeared in the *Exchequer*, and accounted in Person.

See Madd.  
Firmæ Bur-  
gorum per  
totum.

But the other Manors that were dispersed in the Countries, and as it appears by *Maddox* 519, were accounted for by the Sheriffs; for none were tallaged (*i. e.* taxed by the King or his Justices) but *Ancient Demesnes*, and *Burroughs holding of the Crown*.  
Madd. 520.

Post. 27;

These made up the *firmæ Majores*, & *firmæ Minores*, that were after the Time of *Ed. I.* accounted for by the Sheriffs, and in Process of Time they made a Bargain at the *Exchequer*, to account with the King for a certain Rent, (instead of the Tallages, which were in a Manner arbitrary,) and then they were never taxed by Parliament, but for the 10th and 15th of their Personal Estates; but they answered their Rents at the Receipt of the *Exchequer*,

C

*quer*, that were particularly charged upon them, or else answered them to the Sheriff; if they answered to the Sheriff, he took and totted them; if to the *Exchequer*, they had a Receipt from the *Exchequer* Chamberlains, and afterwards signed by the Auditor General, when that Office was erected: The Sheriff was upon his Account, and shewed the Book of the Clerk of the Pells in his Discharge; the Summons of the Pipe got in the Tallages, and afterwards Rents, with the other Debts of the King; and if any of them had Under-tenants, as it was usual in Manors, they had *Distringas's* in Aid, out of the *Exchequer*, to raise the Tallage from their Under-tenants.

See Madd.  
517.

These Lands, whilst under Tallages, (which was the ancient Way of the King's taking the Profits of his own Lands,) were capable of no Improvement; because whatever Improvement was made of the Lands, made the Tallages higher, which were Assessable  
at



# the Court of Exchequer.

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at the King's or his Justices Pleasure as  
aforefaid.

And it therefore became the Interest  
of the Crown to fet them at certain  
Rents, that fo they might improve  
their own Lands to the utmost.

These Demefne Lands belonging to  
the Sockmen or Plowmen, were after-  
wards called Tenure in *Socage* \*, in  
Contradistinction to Tenancy by Knt.'s  
Service ; and when there was a certain  
Refervation of Rent, it was a Mark of  
Tenancy in Socage ; but if Knight's  
Service, the Demands were casual and  
uncertain.

\* This must  
be meant  
Villein  
Socage, and  
not Free So-  
cage.

And afterwards feveral Lands, not  
Ancient Demefne, that efcheated to the  
King, were granted out in this Man-  
ner at a certain Rent †, whereby the  
Socage Tenures were confequently  
much more large than the Ancient De-  
mefne.

† i. e. In Free  
Socage.

The King not only gave Lands to  
the Tenants in Ancient Demefne for  
Freedom, yet some Antient Demefne Towns obtained that  
Name by Charters of Incorporation, which gawe them a  
Power to chufe their own Magistrates, &c.

Note ; Tho'  
the Term  
Burrough  
imported

his Provision, but likewise several of the Demefne Lands were given to Burroughs for the cloathing his Houfehold.

The Demefnes granted for Provision were given to fingle Perfons that carried on the Tillage by their Sub-tenants and Servants; but thefe granted in Burgage were granted to Corporations, from whence it came to be the Notion, that a Corporation could not be erected without a Charter from the King \*; and thefe Charters contained not only an Erection of that Body, by a certain Name, with certain Liberties and Privileges, but alfo a Donation to them of certain Lands to hold of the King, by providing Cloth for his Houfhold, or importing Silks or other foreign Manufactures.

\* When it is evident Corporations were before Kings:

But thefe Manufactures at laft were not given to the King in Specie; but inftead thereof the King's Commiffioners impofed a Tallage, which was fometimes paid in by the Corporations themfelves, and if not, was collected and

and paid in by the Sheriff, and he charged in his Accounts with it. *Madd.* 483, 487.

The second Sort of Lands were those that were held by *Knight's Service*; there was no certain Sort of Profit arose by those, for they were not for the King's Provision, but his Defence; these were to attend the King in Arms, according to the Array that was made on every Expedition; and whosoever failed in coming or rendring his Quota of Men, according to his Tenure, his Lands were originally liable to be seized into the King's Hands for not doing his Duty; afterwards this Seizure was changed into an *Es- cuage*, or a Fine, according to the Degree of his Failure; as if he failed one Knight, then for one Knight's Fee; but if they sent, instead of Personally appearing, they made a Composition with the King for not attending in Person, but sending others; if he did not come at all, then he was cessed for all the Lands he held, but had no *Es-*

*Zouchii Method' de feudis* 164.  
See and Note Bacon of Government, l. i p. 277, 278, 279.

*cuage* from his Tenants; but if he came, and there was a Deficiency in any of his Tenants, he had *Efcuage* from his Tenants; this was an Inducement for every Person to come or fend, because he had no *Efcuage* at all, unless he were there or sent, so that all the *Efcuage* fell on him, and he had no Aid over.

Vide Bacon  
ubi supra.

This *Efcuage* came to be assessed by Authority of Parliament, after the military Expedition was ended, and so much was assessed on every Knt.'s Fee; so that if he, that held *per Baroniam*, came with all his Knights, he was excused; if he came only with Part of his Knights, the *Efcuage* was in Proportion to the Default of such Knights, and such Baron appearing had Remedy over upon all Defaulters Fees held of him; and according to the Mode of that Time, all Barons had many Tenants holding of them, in order that they might be sure to attend with their Quota; for it was a Dishonour to come without them, and  
where

where ever Efcuage was affeffed on the Knight's Tenants making Default, there the Baron appearing in the Hof had Efcuage on his own Tenants that made Default.

It was a general Rule of the feudal Law, that the Prince never had Efcuage unlefs he went to the War in Perfon ; becaufe the Tenants *in Capite* were only obliged to attend their Prince, and fo the Tenants were not originally obliged to attend, unlefs the Lords were there in Perfon ; but it foon became a Practife after the Conqueft, that they might excufe or effoign their Attendance, and attend by Deputy.

The Effoigns were of two Sorts, either Spiritual or Temporal, the Spiritual Effoign came in after the Conqueft, when the Spiritual Perfons were obliged to hold of the King *per Baroniam*, for fuch Spiritual Perfons could not attend in Perfon in the Wars, and therefore they were obliged to have Deputies for that Purpofe, and thefe

Deputies upon the Muster of the Host were allowed.

The second Sort of *Essoigns* were Temporal, which was Sickness, when the Tenant of the King was ill, and languishing, then likewise he might appoint his Deputy, and these Deputies upon such Excuses admitted were inrolled in the Host, as if the Tenant appeared in proper Person.

At the Muster of the King's Host, the Marshal gave a Certificate under his Hand and Seal to all the Tenants that there attended, which was an uncontested Evidence of their attending the King in his Expedition: when Escuage was assessed upon the Tenants in Parliament, every Tenant might have his Certificate into the Court of *Exchequer*, and upon such Certificate the Barons discharged him out of the King's Rent-Roll; for such Certificate of the Marshal inrolled in the Court of *Exchequer*, was an Authority to the Barons to discharge the Pipe-Roll of an Escuage upon such  
Tenant

## the Court of Exchequer.

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Tenant, that so no *Distringas* issued upon such Eſcuage; if the King's Tenant had not inrolled his Certificate, then the *Distringas* regularly issued; but the Tenant might plead such Certificate at the Return of the *Distringas*, and get the Discharge; but however, the *Distringas* did originally issue, because he had not inrolled his Certificate; where it was inrolled it was never in Discharge to the Sheriff; where it was pleaded upon the Return of the *Distringas*, the Sheriff was fined till such Certificate produced.

If any inferior Tenant was distrained by his Landlord for Eſcuage, he might replevy; and if upon such Replevin he could plead that he was with the King in the Expedition, and shew his Certificate from the Marshal, the Tenant might have a *Recordari* of such Complaint before the Sheriff, and thereby bring it before the Justices in Eyre, and upon producing such Certificate before the Justices, the Justices granted a Writ *de Returno habendo* of such Distress.

To

Vide antea.

To every one of these Expeditions the Tenants in Ancient Demesne, and Burgage Tenants aforesaid, were wont to grant an Aid before the Expedition begun, or the King tallaged them after the Expedition was ended; the more was granted in Aid, the less was expected in Tallage, and generally it was a Tenth or a Fifteenth; for higher they never went, and therefore Es- cuage certain is called Socage, because the Socage Tenants were always taxed in a Sum certain, *viz.* a Tenth or a Fifteenth upon their Goods, in an Expedition.

The Justices Itinerant, before every Expedition, went about to the several Tenants in Ancient Demesne, and to the King's Borrough-Holders in every County within their District, and there they demanded an Aid, which was in the Nature of a Gift or *Auxilium* towards the King's Expedition; and if they could not then give, at the End of the Expedition the King might Tallage to a Tenth, but  
not



not to more, towards such Expedition ; this was absolutely necessary for the Provision of the King, for the King was obliged to find his own Table during the Expedition, and that could not be done without an Aid or contracting a Debt, and when the Debts were contracted, the King's Tenants in Socage were bound to contribute as far as a Tenth of their Moveables towards the Discharging of the King's Debts; as where the King and his Council sent for the City of *London*, and demanded a certain Sum in Tallage, and if they refused, then the King and his Council ordered them to be decimated towards the Discharging of the King's Debt, and upon the Decimation they were obliged to swear to the Value of their Goods; and of this see a notable Record in *Maddox* 491.

The Legality of this seems Questionable; for the City of London was ever held in Free Socage. But some Tenements therein were held in Ancient Demesne, i. e. in Villeinage.

And here it is to be noted, that after such Tallaging of the Metropolis, the Justices in Eyre went through their proper Circuits, and tallaged all  
the

the King's Tenants in Ancient Demesne, and his Burgage Tenants; and when the Expedition was prosperous they were freer in demanding the Tallage.

When any Aid was given or Tallage was assessed by the Justices upon any City, Town or Burrough, the Justices Itinerant returned such Aid or Assessment out of their several Iters to the *Justiciarii residentes* in the *Exchequer*, and from thence the Sum was tranferred into the Pipe-Roll, and a *Distringas* issued to the Sheriff, and upon his Return he was to render an Account of the Sum so charged upon him.

As the King gave Lands to Towns, so likewise to several Companies within Towns, as *London*, where the Tallage was assessed on the Aldermen of every Ward, *i. e.* on him who was the Alderman of each respective Company; and these were of good Use, as they rival'd in *Free Gifts* one with the other.

Note; These Tallages are here called Free Gifts,  
*Ergo Quare.*

When they did not deliver their Goods in Specie to the King they were tallaged *ad decimam*, for the Lands

they

they held, and for the Goods of which they were possessed; but there was this Difference between the Tenants in Ancient Demesne and Burgage Tenants, that these were bound to Suit of Court by two Attornies or Representatives, for each particular Borough or Town; but the Companies within the Town were not represented, because they had only Part of the Lands which were first granted out of the City; but the Rustick Tenants were bound to no Suit but to their Court at home, for their Business was to attend their Husbandry, in Order to make the most of the King's Demesnes.

But the Burgage Tenants were under the same Tallage, because they did not deliver their Goods in Specie no more than the Rustick Tenants in Ancient Demesne.

Afterwards these were turned into certain Rents, and then they were not taxed by Tallages; and if any higher Taxes were demanded of them, as

Note; The Antient Demefne Tenants had no Representatives, being never esteem'd Freemen.

10ths and 15ths, and the like, they were given by their *Representatives*.

The Suit of Court of the Burgage Tenures, when made Free by Charter, were both useful to the Publick, and profitable to the King; for their Towns depending upon Trade and Art, they were consulted with when any Laws or Rules were made in Relation to their Arts, and petitioned the King when any foreign Imposts were laid in foreign Dominions which tended to their Damage.

It was profitable to the King, because they came with Gifts, that so they might not be tallaged \*: Because though anciently the King assessed those Tallages on his Demefne Towns, by his own Justices or Commissioners, *Maddox* 506, yet afterwards it was found less invidious to receive Gifts and Aids by their Representatives, when they came to do Suit at Court, and they vying one with the other, made it more profitable to the King than the ancient Tallages,

\* This shews that some Princes broke thro' their own Charters by tallaging Towns they had made Free.

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and since they usually came with such Gifts, they frequently procured the Services of the Lands to be turned into *ascertain'd* Rents; from henceforward the Tallages ceased, because the certain Rent came in lieu of them, and then these Aids and Gifts were in the Power of the Burgage-Holders, to give or not. This encouraged the Tenants in Ancient Demesne to get their Services changed, and towards the latter End of the first *Norman* Period, they, with the Men of the County, began to send their Representatives, which sat with the Representatives of the Burghers.

The Tenants in Knight's Service held by Suit to the King's Court, and were indeed the proper Suitors to that Court; for the Burgage-Holders being Corporations and great Bodies of Men could not come in Person, and therefore they were admitted to send their Proxies; but the Tenants by Knight's Service were on the King's Summons to attend his Court, and this they did

in

See Bohun's  
Collection  
several  
Charters,  
Temp. R. 1.  
Joh. &c. for  
erecting An-  
cient De-  
mesne Towns  
into free  
Burroughs,  
which im-  
plied a  
Right of  
Representa-  
tion.

in Person, and were not admitted to appear by Proxy without a special Leave of Court, which was never granted till they appeared and shewing Reasons for dispensing with their Attendance.

It was originally in the King's Power to summon which of his Tenants he pleased, and such Attendance was deemed a Burden; but afterwards they fell into a more regular Summons of the same Persons; for those that had small Tenancies were not able to bear the Expence of such Attendances, where in Living and Equipage they vyed with each other; and therefore Earls and Barons were in Process of Time regularly summoned to such Attendances, and these were anciently Honours compounded of so many Knight's Fees as would bear the Expence; a Barony consisted of 13  $\frac{1}{2}$  Knight's Fees; a Knight's Fee was then of the Value of 20 *l. per Ann.* which according to the present Value of Money was *per Ann.* and the Value

Value of a Barony was computed to amount to 400 Marks, and an Earldom to 400 *l.* which was 20 Knights Fees, so that the Unit was the Knight's Fee; the Earldom held in Proportion to the Knight's Fee, as the Pound to the Shilling; and to the Barony, as the Pound to the Mark; and the Barony held proportionably to the Knt.'s Fee, as the Mark to the Shilling.

The Baronies and Earldoms were anciently granted by so many Knights Fees, *viz.* if their Honour consisted of 13  $\frac{1}{2}$  Knights Fees, they were compellable to hold *per Baroniam*, and he that had 20 Knights Fees, to hold as an Earl; but when these Grants came to be lost by Time, they held their Honours as they did their Estates, by the prescriptive Right of Possession; and then their Summons to sit in Parliam. was a sufficient *Indicium* of that Honour, even after their Estates were spent and gone; because they had anciently such Estates as corresponded to such Summons, and such Summons

D

gave

gave them a Seat on their several Benches in Parliament; and therefore their Honours continued by sitting in that Aristocratick Body, though their Estates were spent, on which the Summons first issued.

Seld. Tit.  
Hon. 688,  
691.

But Mr. *Selden* is of Opinion, that there was no certain Number of Kn'ts Fees, necessary to make a Baron or Earl; but that they consisted in so many Knights Fees, as were contained in the Charter, and with so many Knights he was obliged to attend, and that the Number of Knights contained in the Charter, regulated the Number of Knights Fees contained in such a Barony: And indeed nothing is more certain, than when Baronies were first created or given out after the Conquest; when the whole Nation took new Charters from the Conqueror, the Charter expressed the Number of Knights reserved on such Baronies; and that such Barons were wont to grant out Lands to their Vassals, to hold by Knights Fees, to attend



tend and do that Duty which was reserved by the Charter. From hence came all the Fruit of the feudal Tenure; for during Minorities, the King was forced to find another Person to serve instead of the Baron; and therefore had the Fruits of the Barony, in Order to breed the Baron to his Service; the Baron for the same Reason had the Wardship of his Tenants Sons, in Order to breed them up to the Wars; and since the Knights Fees were given to do the Duties of the Tenure, they were not certain, but depended on the Bounty and Agreement with the first Baron and his Tenants; but in those early Times they very well knew what was necessary for the Support of a Knight, a Baron, or an Earl; and in *Ed.* the 3d's Time, when the *Modus tenendi Parliamentum* is supposed to be wrote, they thought the usual Subsistence of a Knight could not be less than 20 *l.* *per Ann.* that of a Baron 400 Marks, and that of an Earl 400. *l.*

<sup>2</sup> Inst. 8.  
Bacon, lib. 1.  
p. 308.

## ADDENDUM.

[Touching Reliefs, pay'd for Knt's Fees, &c. See *Selden's Titles of Honour*, fo. 688. 2 *Inst.* 8. *Bacon of Government*, lib. 1. 308, &c.]

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## CHAP. III.

## Of Tenures in Capite, &amp;c.

Spel. Gloss.  
67. Seld.  
Tit. Hon.  
692.

TOWARDS the latter End of the first *Norman* Period, when any Barony escheated they were wont to break such Baronies into smaller Tenures *in Capite*; because they found their Barons, by their great Possessions, were able to give the Crown great Disturbance; and it was impossible, these growing so numerous, as to be at one Time about 3000, should be all summoned at a Time, and therefore the King selected from that

Num.

Number as many as he thought proper; this created great Variety in the Summons to Parliament, and first gave Ground to that Opinion of the Lawyers, since much disputed, that it was the Summons to Parliament that created the Baron, and it has generally been agreed to be right, that the Summons and Sitting in Parliament makes the Baron; because when the Charters of *Will.* the 1st were lost and destroyed by Time, the feudal Barons had no Evidence of their Baronage, but their doing Suit and Service as Barons at the King's Court; as where the Charter of the Feoffment of the Tenement is lost, the Tenant has no better Evidence of his holding of the Manor, than that he and his Ancestors have done Suit at the Lord's Court time immemorial, and proving this by the Rules of the Manor.

But when the King had broke the greater Baronies into lesser, the great Barons composed a House by themselves, and did not sit by the *Barones*

*Minores*; and the *Barones Majores* made an Aristocratick Body of themselves; and the *Barones Minores*, together with those that held of the King to pay Suit to the County-Court, sent Representatives to Parliament, and sat with those Representatives of the Boroughs, who now having got their Tenure under certain Rents, concurred in all extraordinary Aids to the King; and the Tenants in the County being such as held immediately from the King, either to do Suit at the King's Court, or at the Sheriff's in the County-Court, their Representatives were to be Knights; whereas the Representatives of the Cities and Boroughs were to be Burgeesses and Citizens of each particular Town.

The Barons, or Tenants *in Capite*, were such as were to accompany the King in the Wars, and they were to come attended with so many Knights Fees according to their Patents; and these were mustered by the King's Marshal,

The

The Names of the Persons appearing, as likewise of the Defaulters, were inrolled at the next Parliament.

They assessed the Eſcuage, which was the Nature of an Afferement of a Sum of Money, by the *pares Curie*, upon every Defaulter.

Generally ſpeaking, the Eccleſiaſtical Barons did not go to the Wars; and therefore we find in *Maddox's* Account of Eſcuage, there were more Rolls of Eſcuage taxed upon the Biſhops and Abbots, than any other Perſons.

If a Baron was taxed to Eſcuage, and was diſtrained for the ſame unduly, when he had appeared in the Service, he was to take out a Certificate from the Maſhal of the Hoſt, under his Seal, which was to be ſent to the Juſtices, as *Littleton* ſays *fo. 74.*

Theſe Certificates were generally before the Division of the Courts, and therefore when *Littleton* ſays the Certificate was ſent to the Juſtices, it

seems to be a Mistake in the Printer, and that the Certificate was sent to the *Justiciar* and Barons, under the Seal of the Marshal of the King's Host; and so a *Distringas* went out of the *Exchequer* from the *Justiciar* and Barons, to distrain all the Defaulters; and if any Body was distrained where he had served, he might appear at the Return of the *Distringas*, and plead that he was *in servitio Regis*, and was to be tried by such indented Certificate, remaining before the *Justiciar* and Barons, and nothing else.

Madd. 468.

If likewise any Abbot that held in Mortmain was distrained, he might traverse that he did not hold by Knt.'s Service, but free from all Escuage and Tallage.

Madd. 470,  
471.

There are likewise in *Maddox* several Instances of *Distringas*, that issued on Behalf of the Tenants *per Baroniam*, to distrain their Under-Tenants; because the Under-Tenants were obliged to aid them, in Order  
to

to the paying the King's Escuage; and this was in the Nature of a *Distingas* in Aid, since they were indebted to the Baron for Escuage, as the Baron was to the Crown.

The King's Tenant *in Capite*, be- Madd. 447.  
 ing his own particular Freeman, who did suit at the King's Court in the most honourable Manner, they used likewise to assere, or bring in their own Assessments, just as the Freemen in a Court-Baron do assere the Assessments of those who are absent; and this was a good Contribution, because it put it in the Power of those, who had discharged their Duty, to assess the Rest; for the Escuage was after assessed by the Barons coming in to the King's Standard, before he went on the Expedition; and if it were not then assessed, but remained afterwards to be assessed in Parliament, which was the more common Case; yet the Number of those doing their Duty, for fear they should not have Escuage from their Tenants, was so much greater

greater than the Absenters, that they generally made such Assessments as contented the Crown; and indeed it was thought but Justice so to do, because the only Consideration of those Tenures was the doing Service; and therefore the Profit of the Lands, from the Time of the last Escuage paid, was answerable to the ensuing Escuage for the Non-performance of the Duty required of them; so the Tenants, who had done the Duty, usually put the Load heavily on those who had been negligent of the Expedition.

The Tenants in Ancient Demesne found Provision for the King, and the Tenants by Burgage Tenure found Cloth and other Merchandize for him; and these Provisions being valued at a certain Rate, were afterwards in some returned into Rents, and in some received in Specie.

But upon particular Occasions of Wars, the Justices Itinerant were wont to go within these Liberties, and after a Solemn Declaration of the King's  
Necessities,



Necessities, they used to ask a free Gift in that Place towards the King's Wars; and such Tenants and Burgeses were used to vote in the first Place, that the King should be supplied; in the next Place, the Quantum of the Supply; and then they appointed their own Assessors, which were generally two, that rated every Person towards that Quantum, and then the King's Collectors entred into such Liberty, and collected it according to the Rate thus imposed.

If such Boroughs would not either supply the King, or not supply him in Proportion to his Wants, the King could not tax them by his own Power, because they were free, and not Villeins; for none but Villeins could be taxed *haut en bassor*, at the meer Pleasure of their Superiors; where they would not grant a Supply, it was usual for the Justices in Eyre to enquire into the Proceedings; and if there was any Abuse of their Liberties, *Quo Warranto's* were sent down in

Note; Tenants in Bur-  
gage were  
Freemen,  
but Tenants  
in Ancient  
Demesne  
were the  
King's Vil-  
leins.

in Order seize the Franchises. From this we may see the Inequality of Representation in the several Counties; for there were but two Representatives in a County, and the Rest were according to the Number of free Boroughs that were in that County; and therefore when any Manor of Ancient Demesne was so changed, and the Provisions they were wont to answer to the Crown in Specie, were turned into a Rent, they erected it into a Friburgh, and there were Words in the Charter to give them a Liberty discharged from all Payments.

These were not taxed but by a Free Gift, which was managed as herein before is mentioned.

But these Ancient Demesne Lands, that sent their Provisions in Specie, were not tallaged; because after the Provisions rendered to the Crown, there was but a small Livelihood remaining to themselves for Labour and Pains; and therefore they could afford no Tallage.

Hence

Hence it is, that in the Time of *Ed.* the 1st, some Manors of Ancient Demesne sent Members to Parliament, and not others, because such were the *Friburghs* subject to Tallage.

See Bohun's  
Right of e-  
lecting to  
Parliament,  
106, 122,  
142, 152,  
181.

[ Note; These Antient Demesne Manors seem to have been made Free by Charter. Q.]

In *Cornwall* they had Members of Parl. because there were 20 *Friburghs* in that County; and that came to pass, because that was an Earldom, and afterwards a Dukedom apart, and generally possessed by some of the Royal Family; and it being a Place abounding in Tin, they erected as many Freeports as they could, for the exporting of that Manufacture; and some of them were under express Conditions mentioned in their Charters, that they should not be taxed but when the rest of the King's Subjects were.

When the Baronies *Majores* were broke into many Baronies *Minores*, several Boroughs likewise had the Right

Right of assessing the Eſcuage; and therefore they were called with the reſt of the greater Barons to the Aſſeſſment of the Eſcuage; but not being able to come in Perſon, they ſent their Representatives (as has been already mentioned) to ſit with the Burgage-holders; and thenceforward by the Policy of *Ed. 1.* they were blended in one Houſe; and therefore the Burgage-holders and Citizens joined in the Aſſeſſment of the Eſcuage; ſo the Knights joined in the Aſſeſſment of the Aids of Burgage-holders and Citizens; by theſe Means they vyed with each other, who ſhould give moſt to the Crown in their ſeveral Ways; and thus *Ed. 1.* by calling the Knights, Citizens and Burghers to each Aſſeſſment, contented them, and ſerved his own Purpoſe; becauſe nothing was done but by their own Conſent in the Aſſeſſment of Eſcuage or Aids; and from the Time of his Grandſon *Ed. 3.* the Military Tenures declined, Mercenaries were uſed, and they made

use of another Manner of taxing, which shall be hereafter mentioned.

But this is to be noted, that when the Burghers had ascertained their Rents, and were sent for as by the King to give him further Aids, they had Instructions from their Principals how much they should give. Hence the Tax began with them, and from the *Barones Majores*; because they could not agree with their Proposals, if they exceed the Commission they had from their Principals.

After *Ed. 1.* had modelled his excellent Constitution, and had brought Lords and Commons under a Regulation, which seemed to be for the general Good of the whole, He seemed to be industrious for the Destruction of the Records of what was passed; so that we cannot with great Certainty have an Account of our Government before his Time. It had been the constant Usage before the Conquest, that all Judicature proceeded from the King; this Rule was regularly

larly observed from the Conqueror's Time; for he seemed to have been jealous of this Point of his Prerogative more than of any other, as is plain by confining the County-Court to 40 Shillings; and if they held Plea for a larger Sum, a *Justices*, which is in Nature of a Special Commission, was necessary; and therefore the Judicial Authority, as is elsewhere mentioned, was exercised from the Time of the Conquest, by the King's *Justiciar* and Barons, summoned for that Purpose by the King's Authority; and therefore when *Ed. 1.* modelled the Parliament into a regular Assembly of two Houses, where they always sat, *viz.* in the Upper House, or House of Peers, it seems by *Coke, 2 Inst. 50.* they tried a Nobleman by his Peers very anciently in the Case of the King, as appears by the Earl of *Hereford's* Case, in the Time of *Will.* the Conqueror.

This turns on the Principle of the feudal Law, *Si inter Dominum &*  
2
*Vas-*

*salum his moveatur pares Curie sunt* *Judices*; and therefore the Peers in the Time of Parliament were try'd by the Peers in the House of Lords, and out of Parliament by the *Justiciar*; and in his Absence by the Steward of *England*, who summoned some of his Peers on the Trial, and 12 at least were obliged to appear; this Summons is set forth 3 *Inst.* 28. where my Lord *Coke* says, there must be twelve or more appear. Feudal Law, *Vigellius* 87. *Guidothus* 197. *Lafius* 196. Where all agree the Rule to be, that if the Contention was between the Lord and his immediate Vassal, the *Pares* were Judges; tho' this was subject to many Distinctions afterwards in the Empire, for the Regal Feud was judged before the Emperor's Judges, and the Rule was confined to Feuds not Regal; and so if the Trial was between the Lord and his Vassal, if the Lands were Feudal or Allodial, it was before the ordinary Judges, and not the *Pares*; but in *England* the *Pares* were Judges of

the Fact in every Case, (as is elsewhere mentioned,) and the immediate *Paras Curie*, when the Contention was a Case of Felony or Treason between the King and his Vassal, which is according to the old Rule of the Feudal Law; but in other Cases it was *coram paribus*, not of the Feudal Court, but in the County where the Fact was done, which was on the Presumption that they would have the best Knowledge of Fact, and Credit of the Witnesses; and therefore in all other Cases, unless of Treason or Felony, the ordinary Trials were by Jury. *Vide Dr. Stillingfleet of the Bishop's Jurisdiction in Capital Causes*, 360 to 373. And though they anciently summoned but some of the Peers, yet when the Parliamentary Peerage had been settled in *Edw. 1.* and so downwards, they summoned them all; and the Manner of giving their Opinion is, 1 *H. 4.* 1. 3 *Inst.* 28, 29, 30. But the Bishops claimed an Ecclesiastical Privilege, to be only tried by the Archbishop



bishop as their Ordinary; therefore in the Case of *Mark*, Bishop of *Carlisle*, where this Challenge was made of the Liberties of the Church, and over-ruled, he did not challenge his Peerage; and so was the Case of *Fisher*, Bishop of *Rocheſter*, in *H. 8. Dr. Still. 368.* for they would not make any Challenge to be tried by their Peers; for they would have admitted a temporal Jurisdiction; ſo by *Non-uſer* of any Right of being tried by their Peers in Capital Caſes, theſe Biſhops, who held *per Baroniam*, and conſequently had a Privilege to have a Trial, totally left the ſame, and are tried by a common Jury.

All Peers are ſummoned by Writ to Parliament, the Form of which ſee in *Cotton's Records 2, 3, 4.*

Anciently, as was ſaid, the Tenure firſt created the honour, and ſuch as held *per Baroniam* were ſummoned to do Suit and Service in Parliament; and ſuch Summons was an Evidence of ſuch Tenure: Afterwards, when theſe

Tenures were broke, the Summons gave the Barons Authority to sit, provided they sat according 1 *Inst.* 9. b. 16 *E.* because their sitting in Parliament makes them Part of the Aristocratick Body ; so if they are legally summoned and sit, they have a Right ever afterwards; this is much controverted by *Pryn* in his *Plea for the House of Lords*, from 147 to 161.

Seld. Tit.  
Hon. 530. b.  
495, 496.  
Show. Rep. 5.

But in all Degrees of Quality above a Baron, a Summons is not sufficient; because there are other Ceremonies requisite, as in that of a Viscount, there must be performed, unless dispenced with by Letters Patent ; and these being Matters of Record must be produced to shew his Title; so the Earl is created by girding on a Sword, and the solemn Imposition of a Coronet, in *England*; and in foreign Places, by delivering him an Ensign ; and the Judges, though they are summoned to Parliament, come only to assist the Parliament ; and therefore the Chancellor, who is in Nature of a Steward in the Court-

Spel. Gloss.  
142.

Court-Baron of the King, lays the Mace on the Table, when it is an House, to shew that the King's Steward, who is appointed in his Absence to hold the Court, is there; and the Judges are called *Quod intersitis vobiscum & cum cæteris de conciliis*; and therefore they sit round the Table in Order to assist the Speaker, or the King (when present) in Matters of Law. 4 Inst. 4. But the Chancellor has no Voice unless he be a Peer, for anciently he was none, unless he held *per Baroniam*; now he is none, unless created by Pa- 4 Inst. 266. tent or Summons; for in the Court-Barons, or County-Courts, the Steward was not Judge, but the *Pares*; nor was the Speaker in the House of Lords Judge, but the Barons only.

The first Summons of a Peer to Parliament differs from an Ordinary Summons; because in the first Summons he is called up by his proper Christian Name and Surname; and not having the Name and Title of Dignity in him, till he has sat as Part

of the Aristocratick Body; but after he has sat, the Name of Dignity is Part of the *Cognomen*; but this Writ of Creation in all other Things is the same with the ordinary Writ that calls them.

But *Quære*, If the Person on his first Summons is called by the Name of Lord, and sits under that Name as Part of the Aristocratick Body, whether by that he would not be ennobled; as if the Father, being Lord *A.* was outlawed for high Treason, and his Son is called Lord *A.* which he was not at the Time of issuing the Writ, and sits in the House by Virtue of such Writ, *Quære*, whether sitting as Part of the Aristocratick Body, he be not vested with the Title and Dignity of Lord *A.*

[*Resp.* I think this new Summons, and Sitting in Pursuance of it, is clearly a new Title vested in the Son, who cannot derive any Title from his Father during his Father's Life: For the Outlawry may be reversed, nay even an Act of Attainder repealed, &c.]

C H A P. IV.

*Of the Ecclesiastical Tenures,  
and of Convocations.*

**I**N the *Saxon* Times the Lords Spiritual held by Frankalmoigne; but yet made great Part of the Grand Council of the Nation, being the most learned Persons that in those Times of Ignorance met to make Laws and Regulations.

But *William* the Conqueror turned the Frankalmoigne Tenures of the Bishops, and some of the great Abbots, into Baronies; and from thenceforward they were obliged to send Persons to the Wars, or were assessed to the Escuage, and were obliged to attend in Parliament; and then their Attendance was complained of as a Burthen; and this begat the grand Quarrel in *Henry* the 2d's Time, be-

Note; The Constitution of the Saxon Church, and the Imbodying of the Prelates into the temporal Government &c. will best appear from that excellent Treatise usually styled *Bacon of Government*, lib. 1. chap. 5. to chap. 16. Vide ib. ch. 11. of Lands given to Bishops, &c. in Frankalmoigne; and Vide ib. ch. 47. an Account of the Introduction of the Canon Law and Ecclesiastical Jurisdiction, by W. I. &c.

tween the King and *Thomas Becket*; for the Statutes of *Clarendon* required such Attendance; which confirmed the Escuage on them, for this they made many subtle Exceptions, as that the Court took Cognizance of the Treasons and Felonies; whereas the Clergy, by the Canon of *Toledo*, were forbid to give Judgment in Blood, *His, qui in Sacris ordinibus constituti sunt, in judiciis Sanguinis adjudicari non licet*; therefore to obviate this Objection, the Constitutions of *Clarendon* permitted them to withdraw in Cases of Blood. Notwithstanding this Concession, they still objected against the 11th Article of this Statute, which says, that *Archiepiscopi, Episcopi, & universales Personæ, qui de Rege tenent in Capite, habent Possessiones suas de Domino Rege sicut Barones, & sicut Barones ceteri debent interesse judiciis Curie Regis cum Baronibus, quousque perveniatur in judicio ad diminutionem membrorum vel ad mortem*. See *Pryn of the House*  
of

## the Court of Exchequer. 57

of *Lords*, 221. This Article obliged them to do Suit in the King's Court; and therefore though they had excepted Case of Blood, yet they knew their doing Suit in the King's Court confirmed their Estates as Baronies; and they did not care that the Munificence of Frankalmoigne of the ancient Kings should be changed into such Tenures; but notwithstanding the Quarrels with *Becket*, the King prevailed that they should continue Barons; and as Barons (*i.e. Suitors*) they sit in the House of Lords.

But the inferior Clergy, which held Pryn. 221, 242. by Frankalmoigne, were not comprehended within any of the Taxes and Tallages, which were assessed on the King's Ancient Demesne and Burgage Tenants; nor in the Escuage which was assessed on the King's Tenants *per Baroniam*, and other Tenants by Knights Service; but 18 *Ed. 1.* the King being under great Difficulties through his Wars in *Scotland*, and the Kingdom being exhausted by the Barons

rons Civil Wars, projected the present Constitution, (*viz.*) That the Earls and Barons should be called (as formerly) and imbodyed in one House, and that the Tenants in Burgage should send their Representatives; and the Tenants by Knights Service, and other Socage Tenants in the County, should send their Representatives to Parliament; and these were imbodyed in the other House; he designed to have the Clergy as a third Estate; and as the Bishops were to sit *per Baroniam* in the temporal Parliament; so they were to sit with the inferior Clergy in Convocation; and the Project and Design of the King was, that as the two temporal Estates charged the Temporalties, and made Laws to bind all temporal Things within this Realm; so this other Body should have given Taxes to charge the spiritual Possessions, and have made Canons to bind the Ecclesiastical Body. To this End was the *Premunientes* Clause in the Summons to the Archbishops



bishops and Bishops, as follows, (*viz.*)

*Premunientes priorem & Capitulum Ecclesie Vestrae, Archiedecanum totumque Clerum Vestrae Dioecesis, facientes quod iidem Prior & Archiedecanus in propriis personis suis, & dictum Capitulum per unum, idemque Clerum per duos procuratores idoneos, plenam & sufficientem potestatem ab ipsis Capitulo & Clero habentes, una vobiscum intersint modis omnibus tractandum, ordinandum & faciendum Nobiscum & cum ceteris praelatis & proceribus & aliis qualiter sit huiusmodi periculis & excogitatis Malitiis obviandum. Teste Rege apud Wingham 30 Die Septembris.*

Wake's Authority of Christian Princes 364.

This altered the *English* Convocation from the foreign Synods; these were totally composed of the Bishops, who were the Pastors of the Church, for the Clergy were regularly esteemed only his Assistants; and therefore the Bishops only were collected to compose such foreign Synods, to declare what

## An Historical View of

what was the Doctrine, or should be the Discipline of the Church.

In the ancient Church they had but one Pastor to every particular Church or Dioceſe, and the other Clergy were ambulatory at the Biſhop's Pleaſure within the Dioceſe; and though after the Council of *Lateran*, the parochial Clergy were ſettled in each Pariſh, the Biſhops only retained a Chapter in the Cathedral Church as Aſſiſtants to him; yet the Biſhop was reckoned to be the ſole Paſtor of the Church, and they to have the Care under him.

Hence in Provincial Synods, the Biſhops only met and were convened by the Metropolitan; and each Biſhop likewise held a Dioceſan Synod with his own Clergy, in which he made Rules and Orders for the Regulation of the Dioceſe, provided they were not againſt the Canons of the Province.

*Ed. I.* projected to have made the Clergy one third Eſtate dependant on himſelf; and therefore not only called  
the

the Bishops, (whom as Barons he had a Right to summon,) but the rest of the Clergy, that he might have their Consent to the Taxes and Assessments made on that Body; but the Clergy foreseeing that they were likely to be taxed, pretended they could not meet under a temporal Authority to make any Laws or Canons to govern the Church; because their Canons were made under the Inspiration of Heaven, and not by any Authority derived from temporal Powers; and this Dispute was maintained by the Archbishops, who were very loth the Clergy should be taxed, or should have any Interest in making Ecclesiastical Canons, which formerly were made by their sole Authority; for though those Canons had been made at *Rome*, yet if they were not made in a General Council, they did not think them binding here, unless they were received by some provincial Constitution of the Bishops; and though the inferior Clergy, by this new Scheme  
of

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of *Edward* the 1st, were let into the Power of making Canons; yet they foresaw they were to be taxed, and therefore joined with the Bishops in opposing what they thought an Innovation; this they did under Pretence that their Power was totally derived from Heaven; and therefore they paid no Obedience to the *Premunientes* Clause; but the Archbishops and Bishops threatned to excommunicate the King; he and the temporal Estate took it so ill, that they would not bear any Part of the Publick Charge, that they were beforehand with them, and they were all outlawed, and their Possessions seized into the Hands of the King; this so humbled the Clergy, that they at last consented to meet. To take away all Pretence, there was a Summons, besides the *Premunientes* Clause, to the Archbishop, that he should summons the Bishops, Deans, Archdeacons, Colleges and whole Clergy of his Province. From hence therefore the Bishops, Deans, Archdeacons

deacons, Colleges and Clergy, met by Virtue of the Archbishop's Summons; which being an Ecclesiastical Authority, they could not object to it, and so the Suffragan Bishops came to Convocation, by Virtue of the Archbishop's Summons; the Clergy esteemed it to be in his Power, whether he would obey the King's Writ or not; but when he had issued his Summons, they could not pretend it was not their Duty to come; but the *Premunientes* Writ was not disused, because it directed the Manner in which the Clergy were to attend, (*viz.*) the Deans and Archdeacons in Person, the Chapter by one, and the Clergy by two Proctors: But however, they held no Convocation could meet, without the King's Writ to the Archbishop; because on that Writ his Summons went out, and it was on the Foot of the Archbishop's Summons, they sat as a Provincial Synod; and the King, by his own Writ, prevailed on the Archbishop to convene the Synod; and he

by his own Authority and Legantine Power from the Pope, was confessed to have Authority to Summon the whole Clergy; the *Premunientes* Clause was inserted in that Writ to every Bishop, as well as the Archbishop, which directed the Manner in which the Clergy should be chosen; but the Writ to the Archbishop was only in general to summon his Suffragan Bishops, Deans and Archdeacons, Colleges, and all the Clergy of his Province; and on this Writ to the Archbishop issued his Summons, both to the Suffragan Bishops, Deans, and Archdeacons in Person, to the Chapter by one, and to the Clergy by two Proctors; so that the Summons follows the *Premunientes* Writ exactly, which was directed to him and to the Bishops.

They met and chose on such Summons; for they allowed, as the Archbishop might have a temporal Authority, as well as a Spiritual Power, so he might have a temporal Motive to  
summon

summon a Spiritual Synod; but yet lest it might be thought (of which they were very jealous) that their Power was derived from temporal Authority, they sometimes met on the Archbishop's Summons without the King's Writ, and in such Convocation the King demanded Supplies, and by such Request owned the spiritual Authority of Governing; so that the King's Writ was reckoned no more by the Clergy than one Motive for their Ceremony (Assembly); but if the Archbishop in his Summons recited the King's Writ, they protested against it; because that was laying his Authority upon the King's Writ, which the Clergy would by no Means endure; for they would not consent that the Prince had any Ecclesiastical Power or Authority to convene Synods; but they allowed the King's Writ to be a Motive for the Archbishop to convene, if he agreed with the King in Judgment.

The Judgments in Parliament, that put the Clergy from the King's Protection

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tection do not appear ; but that they were so, appears from the Close Roll 22 *Ed.* 1. where it appears that the Prelates and whole Clergy of the Kingdom had granted one Half of

Echard 316. their Benefices and Goods, of which a Tenth had been before granted to the Use of the Holy War, and upon this he took the Clergy into his Protection ; from whence the Taxation of the Clergy was at first set on Foot, under Pretence of the Holy War, and that he taxed them afterwards to his own Occasions ; according to that, the Writ is *juxta taxationem ultimo inde factam*, which no King durst have done, but one that had got Reverence amongst the People, by his Exploits in the Holy War ; on this Concession of the Moiety it appears he took them under his Protection.

Ryley 462,  
463.

3 Inst. 119.  
25 E. 3. p.  
120. 27 E. 3.  
C. 1. Gib-  
son's Ap-  
pend.

This succeeded so well, that when the Pope incroached on the King, by collating to Ecclesiastical Benefices by his own Papal Provisions, Statutes of Provisoos and *Premunire*, on Appeals

to



to *Rome*, were made, which passed the better on the Clergy; because the Statutes recite that these Benefices were given to Aliens.

But the Procefs of *Præmunire* was made use of to put the Clergy out of Protection, and they used the Word *Præmunire* in their Summons to the King's Court, because in the *Premunientes* that Word had been used, and Judgment on this Premunition was given in this Form, (*viz*) *Considerat' est quod præd' E. extra protection' Domini Regis ponatur, ac qd' vita, bon' & Catall', terr' & tenement' ipsius E. W. sunt Domino Regi forisfact', E. W. Committitur Mar' duran' benepl'ito Domini Regis &c. Ent. 435.* From henceforward, instead of making one Estate of the Kingdom, as the King designed, they composed two Ecclesiastical Synods under the Summons of each of the Archbishops, and being forced into these two back Synods before-mentioned, they sat and made Canons, by which each re-

spective Province was bound to give Aids and Taxes to the King; but the Archbishop of *Canterbury's* Clergy and that of *York* assembled, each in their own Province; and the King gratified the Archbishop's Vanity, by suffering this new Body of Convocation to be formed in the Nature of a Parliament. The Archbishop assumed the State of a King, his Suffragans sat in the upper House as his Peers; the Deans, Archdeacons, Proctor for the Chapter, represented the Burghers; and the two Proctors for the Clergy, the Knights of the Shire; and so this Body, instead of being one of the Estates, as the King designed, became an Ecclesiastical Parliament to make Law; and to tax the Possessions of the Church; and to cajole the Archbishops, the King received not only his own Aids, but Benevolences were given by the Convocation to the Archbishops.

25 H. 8. 19. At the Reformation, by the Act of Submission of the Clergy, these Convocations were to be assembled only by

by the King's Writ; whereas before they often met on a Summons from the Archbishop, without his receiving any Writ from the King, because they looked on him as having an Authority from Heaven; and by the Statute they could not make any Canon without the King's Licence, or put them in Execution without it.

From hence they began to call the 3 Ed. 4 c. 1. Convocation one of the three Estates; because they could not meet without the King's Writ, or make or execute any Canon without the King's Licence, (as has been already observed;) but however, not only the *Premunientes* Clause, but the Writ to the Clergy continued, because they still apprehended no Canons could be made by temporal Authority.

Thus this continued till the 13 *Car.* 2. c. 4. when the Clergy gave their last Subsidy; when it appeared more advantageous to continue the Taxing of them by Way of a Land-tax and Poll-tax, as it was in the Rump Times;

the Clergy found this easier than the Tenths, which they used to pay in their former Way of taxing. From henceforward it passed that they should have a Vote for Members of Parliament, as they had in the Rump Times, and they were taxed as the Laity were.

In *Ireland* the Parliament depending upon the King, the Clergy seemed to have complied with the Model of *Edward* the 1st, in sending Proctors to Parliament; and the Archbishops, and mitred Abbots sat in the upper House, and the Proctors in the lower House. Hence by 36 *H. 6. c. 1.* it appears, that they made a Law, that beneficed Persons should forfeit their Benefices, if they were absent without Leave, which sort of Regulation was made in *England*, by Ecclesiastical Authority, before the Submission of the Clergy in 25 *H. 8.*

§ Ed. 4. c. 1. It is to be known that the *Premunientes* Writ in *Ireland* summoned only the Proctors of the Clergy, and  
not

## the Court of Exchequer. 71

not the Deans, Archdeacons and Proctors of the Chapters, as in *England*, as appears by an ancient Writ in *Richard* the 2d's Time, wherein the Proctors only are summoned; and it is the only Writ extant before *H. 8.* on which the Clergy were summoned; so that the Parliamentary Establishment, in Relation to the Clergy, differed from that which was established in *England*, for the Reason that *Edward* the 1st projected the Representatives of the Clergy, in Proportion to the Number of the temporal Body; and because there were many Corporations that held in Burgage-Tenure in *England*; therefore the Deans, Archdeacons, and Proctors of Chapters, were let in to make an equivalent Number; but in *Ireland* they were only Representatives of Shires; for the Boroughs did not arise from Burgage-Tenures, as in *England*, but from Concessions from the King to send Members, which were erected in later Times, when by securing an Interest

in such Towns, proper Representatives to serve the Turn of the Court were sent to Parliament; but the ancient Members being only for the Shire, the Proctors were chosen from the County to answer them in Number.

But by 28 *H. 8. c. 12.* the Proctors of the Clergy are excluded from any Suit in the lower House of Parliament, and sometime they seem to be summoned by the *Premunientes* Writ, and the Writ to the Bishop in the same Words, as in *England*; all the Proctors came to Parliament from all Parts of the Kingdom; so they assembled in the Convocation at one Synod where the Parliament was held, and did not form four synodicál Meetings in the four distinct Provinces, as they did in the two distinct Provinces in *England*; and therefore they make one National Synod under the Primate, and there, by the King's Leave, they make Canons which bind the whole Clergy through the four Provinces.

If

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If any Member of the Convocation, who is Proctor, dies, the Archbishop issues his Mandate to the Bishop of the Diocese, to elect another; and this by Virtue of the Power inherent in him to Summon his Suffragan Bishops, who being to obey him *in omnib' licitis & honestis*, and the Clergy their Bishops in like Manner, they by that Command make an Election to supply the Place of one of their Proctors.

In *Ireland*, when any Proctor dies, the Mandate issues from the Archbishop of the Province, to the Suffragan Bishop of the Diocese, and not from the Primate, unless in his own Province; because the synodical Authority in each Province belongs to the Archbishop of that Province, tho' they meet in one Body to make a National Synod.

During the Times of Popery, the Bishops contended that they were to be tried only by their Ordinaries, and therefore would not submit to be tried

*per*

Stilling. Jurisd. of Bps.  
§67, §68.

*per Pares*; from hence it is that there is no Instance where they were tried by their Peers, tho' they held *per Baroniam*; and therefore after the Reformation, when the 'temporal Power prevailed, there being no Instance where they had been tried *per Pares* in Parliament, they were tried by common Juries; though there were Instances in the Times of Popery, where the Bishop being arraigned for high Treason, pleaded he was to be tried by his Ordinary; and being overruled, was tried by a common Jury, because he would not have two dilatory Pleas.

Sometimes the Lords, and sometimes the Commons, were wont to send to the Convocation for some of their Body, to give them Advice in enacting Laws touching Spiritual Matters; such were those temporal Laws, in Relation to the Lollards and Hereticks, which were enacted for the Punishment of such Hereticks as were cast out of the Church on Excommunications



nications; but such Matters purely Spiritual they generally transacted before the Reformation; afterwards they began to receive the Assistances of the Convocation for the Settling of the Church; but this only by Way of Advice; for they have always insisted that their Laws, by their own natural Force bind the Clergy, as the Laws of all Christian Princes did in the first Ages of the Church.

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## C H A P. V.

*Of Suitors in the County-Courts, and the King's Revenue there.*

BESIDES the Tenants of the King, which held *per Baroniam*, and did Suit and Service at his own Court; and the Burghers, and Tenants in Ancient Demefne, that did Suit and Service in their own Court in Person, (and in the King's Court by Proxy,) there was also a certain Set of Freeholders, that did Suit and Service at the County-Court; these were such as anciently held of the Lord of the County, and by the Escheats of Earldoms fell to the King, or such as were granted out to hold of the King, but with particular Reservation to do Suit and Service before the King's Bailiff;

## the Court of Exchequer. 77.

liff; because it was necessary the Sheriff or Bailiff of the King should have Suitors at the County-Court, that the Business there might be dispatched; these Suitors are the *Pares* of the County-Court, and indeed the Judges of it, as the *Pares* were the Judges in every Court-Baron; and therefore the Sheriff or King's Bailiff having a Court before him, there must be *Pares* or Judges, and the Sheriff himself is not a Judge; and yet the Stile of the Court is, *Curia prima Comitatus E. C. Militum Vic' Com' praed' tent' apud B. &c.* 6 Rep. 11, 12. 4 Inst. 266.

So it appears by that the Court was the Sheriff's by the old Feudal Constitutions; and yet the Lord was not the Judge, but the *Pares* only; so that even in a *Justicies*, which was a Commission to the Sheriff to hold Plea of more than was allowed by the natural Jurisdiction of a County-Court, the *Pares* only were Judges, and not the Sheriff; because it was to hold Plea in the same Manner as they used to do in that Court.

Accord-

Spel. Rem.  
50.

Note; the  
Brittons,  
from whom  
King Alfred  
took many  
of his Laws,  
had his *Decemvirale  
judicium*  
long before.  
Vide LL.  
Hoeli Boni  
Sparfim.

According to the Constitution of *Alfred*, there were to be twelve at least of the *Pares Curie* of the County-Court, to give a Verdict; for if there were not twelve at least consenting in one and the same Sentence, the Plaintiff failed, and he could have no Judgment of the *Pares Curie*; and this was the Original of the *Decemvirale judicium* in *England*; but when the *Normans* brought in the Assize, before the Justices in Eyre, there it was necessary for the *Pares*, in the first Place, to view the Land, before they came to the Justices in Eyre to give their Verdict; and then if they all agreed, the Judge immediately took the Verdict; but if they could not agree, then he asked them the Reason of their Verdict; and if seven agreed, then there were five added *de afforciamiento*; and this was the Practice in *Normandy*, as appears by *Terraine* 391, 292. *Old Customers*, Ca. 95. fo. 71. and in *England*, as appears by *Fleta* 64, c. 9. fo. 230. *Bract.*

lib.

*lib. 4. Ca. 19 to 185, and Hale's Hist. Com. Law 120, 261.*

But it seems when these Jurors were added by Way of Afforciamment, they likewise must have a View, because they could not be properly stiled Recognitors, unless they spoke upon their own Knowledge; and therefore, when the original Recognitors of those that came by Way of Afforciamment, consented in the same Verdict, Judgment was given; but if they did not consent, then there was an Afforciamment of more Jurors, till they had a Verdict of twelve, which was according to the ancient Policy of the *English* Law, by which Jurors were carried on till there was twelve consenting in one Verdict.

But after the Justices in Eyre were disused, and the Assizes were tried by the Justices of Assize, then it was impossible to carry on the Inquest by Way of Afforciamment, because the Justices of Assize only sat *pro hac vice*; and therefore it became necessary

fary that twelve at least of the twenty-four returned should be impanelled to give the Verdict; and therefore the whole twelve were obliged to consent to the same Verdict.

Out of the *Pares Comitatus* one was chosen to be the Coroner, who recorded the Pleas of the Crown in the Torn, all Inquisitions of Felons of themselves, and People coming to an untimely End; and likewise all Outlawrics; and these Coroners were in the Nature of Comptrollers to the Sheriff, keeping a Record of the Fines and Amerciaments in the Sheriff's Court; and therefore the Amerciaments in the Courts above were assessed according to the *Magna Charta*, c. 14. *Quod nullus Liber homo Amercietur nisi per Sacrum Legalium hominum* (in the Manner mentioned *Tit.* Fines and Amerciaments) and the Court gave Judgment, *quod sit in misericordia*; this was delivered to the Clerk of the Assize, and by him to the Coroner, who assessed such Amerciaments by the *Pares*

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*Pares* of the Court; and so anciently according to the same Statute, the Counties (*i. e.* Earldoms) and Baronies were affected by their Peers in Parliament; and to that End I conceive *Estreats* of such *Mi'a's* were sent to the Clerk of the Parliament; but by an Order of the House of Lords, these *Amerciaments* were reduced to a Certainty, that of a Duke 10 *l.* and Earl 5 *l.* and a Baron and Bishop 5 Marks; so that by that Order *Amerciaments* becoming certain, there was no Occasion of sending them to the House of Lords, as they did formerly; so the Coroners afterwards, in all Civil Actions, kept one certain Rule of *Amerciament*; which in Time grew to so inconsiderable a Sum, that they were not worth the affecting; but the Fine in *Trespas*; which was imposed by the Court, was so done without *Affeerment*; and was set as anciently it had been affected at 6 *s.* 8. *d.* and is still payed and allowed

G

to

to the Officer of the Court, who takes it as his own Fee.

But the *Mi'a's* are not affected as formerly, nor allowed in any Bill; because they cannot be levied without Affeerment, by the Statute of *Magna Charta*, which is not now worth while; but the Judgment is still in *Misericordia* as formerly, that the Court may order an Affeerment, if they think proper, because the legal Consequence is an Amerciament.

These Amerciaments *per Pares* of the County-Court made up the *Corpus comitatûs*, and the Rents they payed to the Crown made the Sheriffs *Vicontiels*; for these the Sheriff gathered as Part of his own Farm, they being properly Rents that were answered to him as Sheriff, and were paid in when they did their Suit at his Court; and for these the Sheriff pays in his Profers.

See Hale of  
Sheriffs Ac-  
counts, p.  
38, 39, 40.

Hence it is, that these Rents are called *auxilium vicecomitis* in *Cambridge, Cumberland, Essex, Leicester, North-*



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*Northampton, Somerset, Southampton, Wilts and Sussex; and Auxilium ad Turnam Hundredi vicecomitis in Devonshire; vis' franc' pleg' in Bedford, Bucks, Canterbury, Huntington, Essex, Hereford, Northampton, Somerset, Southampton, Stafford; and Redditus ad Turnam Hundredi in Dorset, Turnam vicecomitis in Essex and Hereford; Hundred Silver in Norfolk, Faith Silver in Stafford; because they did Fealty at the Time of Payment; Panel Silver in Norfolk, Certum Letæ cum Capitagiis, which was a certain Rent paid by the Sheriff to the King, upon the Leet's being taken out of the Torn; and to which the Tenants were contributory; and the Leet being taken from the Torn, such Reservations were made payable to the King as Part of the County Rents; and paid as such to the Sheriff at his Torn; so Leet-Fee in Suffolk, Mote-Fee or Court-Fee in Salop; and being paid at the Time when they did their Suit at the Coun-*

ty-Court, they called it *Suit Silver* in *Stafford*, and *Seeta Burgi & Vil-lag'* in *Cambridge*; and because these were ancient Farms, that paid annual Profits to the Sheriff, before they were reduced to Rents, and made up his Farm to the King; therefore they were called *Certitudines* in *Berks*, *Hereford* and *Rutland*, *Certi redditus* in *Lincoln*, *Leicester*, *Somerset*, *South'ton*, *Warwick* and *Wilts*, *certi redditus ad communem finem* in *Derby* and *Nottingham*; and because several of these Rents were assessed according to each Quantity of their *Hydes* of Lands, composing them (each Hide containing 100 Acres,) *Spel. verbo Hide*, *Maddox Dialogo Sc'ii* 31. they were called *Hideage* in *Berks*, *Bedford*, *Bucks* and *Oxford*, and *Soken Fees* in *Suffolk*; some of them being reserved in *Blanch Money*, viz. Money without Allay, and made 105 to the Hundred; they were called *Blanch Farms* in *Yorkshire* and *Suffolk*, *Blanch Rents* in *Kent*, *Albus Servus* in *Dorset*.

*Hydes.* See  
Gale's 15.  
Script. Vol.  
1. p. 560. and  
Note ib. p.  
748.

*set, Servus* signifying anciently a Farm, *Spel. verbo Servus*, some of these Rents were called only Farms, as *Firma antiqua* in *Hunts*, *Firma & Feodo firma* in *Cambridge*, *Northumberland*, *Nottingham* and *Stafford*; also several held by Castleward of the King, and to do Suit and Service at the Sheriff's Court; and the Tallage of such Castleward belonging to the King was turned into Rents; such were *Señta ad warda* in *Bedford* and *Bucks*, *Ward Silver* in *Essex*; and as some of these Tallages, when turned into Rents, were reduced into a Certainty by an Inquest, and therefore called *redditus assize*; some other Rents were likewise paid annually to the Sheriff, such as *Fines pro Seño cur' relaxand'*, in *Bedford* and *Essex*, *Fines Aldermannos* in *Sussex*, *Præstatio, & pulchr' plitando* in *Bedford* and *Bucks*; these were *præstationes arentatæ*, and particularly excepted in the Statute of *Marlbridge*, for the Liberty of doing their Suit in the Sheriff's

Court, and not coming up to the King's Court; this seems to be a Payment, when first their Suit of Service was annexed to the County-Court.

See Hale of  
Sher. Acc.  
33, 34.

The Sheriff took these Farms from the King, and was generally called *de Corpore Comitatus*; if he took them *de Cor' Com'*, he might account as a Bailiff; but if he took them at a certain Rent, they were called *de firma Comitatus*, 100 l. *Blanch de numero* 10 l. in the Farm, under the blank gross Sum, the Tenants that paid their Rents by the *Fee-Tail*, were separately reckoned up.

Crement'  
Com.'

See ib. p. 36.

Next to this comes the Rents called *Crementum Comitatus*, which was either *Crementum Comitatus*, when receiv'd by the Sheriff as Bailiff, or *firma de crement' Comitatus*, when he farmed them to the King; these were several Farms that had been in particular Farms to the Sheriff, and thrown in afterwards into the *Corp' Com'*, that is, when the King had several Lands that held by Cornage or Castlegard, that were held

held by small Rents, and to do Suit and Service in the County-Courts; because the Rents were small, they would not put them to the Trouble to come to the King's *Exchequer*.

The Profit of the County was likewise increased by Arentations of *Affsarts*, viz.

When any one cut down the Groves and Trees in the Forest, and turned the Ground into plowed Land; for this he paid a Rent to the King, and was ordered to do Service at the County-Court, which was another Article that increased the *Crementum* of the County; and likewise if any Lands seized into the Hands of the Crown were not granted to any Body, but left in Charge with the Sheriff; this also, in old Times, increased the *Crementum Comitatus*.

When in the Account of the Sheriff they had wrote the Body of the County, and the Encrease of the County, then they brought in the Discount, which consisted of *Li-*  
Discharge.  
Corp. Com.  
See Hale ut  
ante & infra.

*berationes, Eleemosynæ constitutæ, &c.* the *Liberationes* were Payments of any of these Rents to such Persons to whom the King had granted them; and the *Eleemosynæ constitutæ* were Charities granted out of such Lands; the next were *Br'ia Regis*, being Summons's granted *pro hac vice* out of those Farms; these were Discounts paid out of the Body of the County.

Hale 69, 70,  
71.

As these Lands were sometimes charged in Perpetuity by the King, so they were likewise sometimes granted away; this the Sheriffs complained of, because it was expected from them that they should pay the old Rents to the King, tho' Part of the Lands were aliened from whence these Rents arose; but afterwards they were to account *de remanente firmæ Comitatus post terras datas*; so where there was a *Cremēt' Corporis Comitatus*, which was but in some Counties, and Part of them had likewise been aliened by the King, they accounted *de remanente Cremēti corp' Comitatus*; and here

here it is to be observed, that in the *Pipe* they kept a Roll apart, containing a particular Account of all the Seizures with which the Sheriff was charged, the Total of which came in as an *Item* in the Sheriff's general Account, which was called *remanentes firmæ Cui' post suam Summam*, (that is to say) such Farms as were seized to the King, and which were charged to the Sheriff as remaining in his Hands; and this Sum was an *Item* placed after his Vicontiels, and hereof they kept a Roll on Purpose, as an extraordinary Charge.

I have before me a Series of the *Norfolk* Foreign Account, from the first of King *H. 7.* to the first of *Eliz.* The Title of the Account begins with the Time in which the first Seizures were made, and mentions the Year of the present Accountant, and who was the preceding, and who was the subsequent Sheriff, so that they are made up when the Sheriff is cast out of Court; and the *Items* mentioned the Time and Cause of Seizure; and

at

at the End of each of them is written *remanen'*, which is as much as to say, the Sheriff has still those Lands in his Hands, and that they are not granted out of &c. Some of these Seizures are for Felony; others for Alienation of Lands holden *in Capite* without Licence; and others are Lands seized by the Escheator, and coming into the Hands of the Sheriff; and at the Conclusion of the said Account in every one of them, it is *Summa oneris* (mentioning the Sum) *Script' remanen' in Magno Rot'lo de anno in Itiner' Norfolk post summan suam.*

*Profic' Com'.* In the ancient Sheriffs Account he was charged *de proficuo Com'*, if he received them as Bailiff, or *de firma proficui Com'*, if he farmed them at a certain Rent: These consisted in the Profits of the Sheriff's Torns, County-Court, Fines and Amercements, Fines for the Game, Bloodshed, Assize of Bread and Beer; which anciently arose to a considerable Sum, the Profits of Hundred-Courts, Wapentakes, &c. which  
in



in *H.* 3d's Time was very considerable; but as Business came into the King's Court, these *Proficua Comitatus* became very inconsiderable,

Next to these in the ancient Accounts were *Firmæ majores & minores*, which the King had turned from Provision in Kind to certain Rents payable at his *Exchequer*, and with Suit and Service to be done at his own Court; these were wrote in Charge on the Summons in the Pipe, which is a Summons in Words the same with that in the Green Wax, only different Matters are charged in it; this Summons was in Order to quicken the Tenants to pay in their Rents into the *Exchequer*, and take Tallies from thence; and if they were paid into the *Exchequer* by the Tenants, the Sheriff owed them on his Account; for if they shewed him their Tallies of Payment below, the Foils of which were likewise entred by the Chamberlains in their Books, and by the Clerk in his, that was a sufficient Discharge of that

*Firmæ Majores & Minores.*

Sum

Sum to the Sheriff and Tenants also ; but if the Tenants did not pay it into the *Exchequer*, but to the Sheriff, and the Sheriff *totted* it in his Account, the Tenant was discharged, and the Sheriff was charged with it, because Payment to the King's Bailiff, who had Charge to receive it, was Payment to himself; but it was the Tenants Business to see that it was *totted* by the Sheriff, and to produce (if Occasion) the Sheriff's Receipt to the Court to oblige him to *tott* it; if thro' the Tenant's Neglect it was *Nichil'd*, he was anciently obliged to pay it again, and had his Remedy over against the Sheriff by Commissions which the King anciently issued, as well as by Action; so that it was better for the Tenant to pay it into the *Exchequer*, according to his original Tenure, unless he could confide in the Sheriff.

N. B. That the Summons of the Pipe is the same with that of the Green Wax, as appears by *Gervas of Tilbury*,

*Tilbury, Maddox*, Dialog. 36. The Form of the Writ is in the black Book of the *Exchequer*, Lib. 2. *Qualiter fecerit summonitiones*, and which, as *Hale* says, continues to this Day.

Of the Farms of the County, and *Firmz Com.* all other Farms wrote in the grand Roll, which is in Nature of the King's Rent-Roll of his whole Estate; in such Roll the particular Rents which made up the Body of the County were set forth; but because they after became very small by Change of Money, and Releases to Tenants, therefore they *Madd. 655.* omitted afterwards to charge them in particular, but put them in Gross in *Corp' Comitatus*; and therefore in the great Roll in the *Exchequer*, which is without Date, the Farms that compose the *Corpus Comitatus* were wrote at large till the twelfth of *E. 1.* when the Clerks procured a Patent that they should not be obliged to write out every Year each Particular of the *Corpus Comitatus*, but to write them on a separate Roll one for all, which was

to be read to the Sheriff every Year on his Account.

**Liberationes.**

The most Common of the *Liberationes*, or the Liveries, were the *Liberationes* to the *Comes* or Earl of the County; which seems to have risen on Escheats of such Earldoms to the King, so that many of those Shrievalties seemed to be composed of the Rent paid to the ancient Earls, with Suit to his Court in the County; and it seems afterwards to be the Policy of the Crown, never to give out such Earldoms as Feudal and Palatinate Jurisdictions; but the *Norman* Policy was to deliver such Counties to their Bailiffs, and for the Maintenance of the Splendour of the Earls, to give them one *third* of the Profits of the County Courts.

*Idem* 651.

The Sheriff often gave Acquittances and Tallies to the Tenants, and yet *Nichil'd* them on the Account; and upon Complaint of the Tenants, the King often issued out Writs, whereby Inquisitions were taken, and what Persons

sons the Sheriff had received Money from, which was *Nichil'd* at the *Exchequer*, and such Tallies were produced to the Persons impanelled; and if the Sheriffs were found Guilty they were attached. The Words of

Madd. 670.

the Writ are *quod veritatem talliar' delictarum scil't inquirat, & si delictores talliarum fuerint attincti tunc Habeas Corpora eorum coram Baronibus, &c.* but for the more effectual Remedy of this Grievance, the Stat. *de Attinct.* was made 12 E. 2.

Wingate's  
Stat. Tit.  
Sher. 547.

which is, that when Sheriffs and other Ministers being impleaded in the *Exchequer* for receiving the King's Debts by Tallies or Acquittances, and not acquitting the Party thereof in that Court, are so far gone in Plea, that the great Distress is returned against them; and if they come not then in to answer, then shall issue out another Distress, returnable at a certain Day, by which Writ Proclamation shall be made in full County, that the Defendants appear at the Day, and acquit

the

the Debt for which he made such Tally or Acquittance; at which Day if he comes not, and the Writ be returned, and the Proclamation certified, he shall be held as Convict, and the Debt shall be taken of him as a Debt, recovered in the King's Court, and Damages shall be also awarded to the Plaintiff at the Discretion of the Barons. Howbeit, none shall be hindred by this Statute to complain of Sheriffs and other Ministers, when they shall be found in the *Exchequer*, to make them answer there as hath been formerly used.

Vern. 23.  
Considerations for regulating the  
*Exchequer*.

From the Roll of the preceding Year, and the *nova oblata* of Estreats; the Comptroller of the Pipe (having a Duplicate of the said Roll) made out the Pipe-Roll.

The Clerk of the Pipe anciently made the annual Roll, in which Summons the Sheriff was apposed anciently in open Court, and now by the Cursitor Baron, and he is said to be apposed, because the Court is to judge what he  
ought

ought to *apponere*; and before the Court, the Clerk of the Pipe takes down, what is *Nichil'd* by the Sheriff, and so does the Comptroller of the Pipe, and the Sums the Sheriff charges himself with, and the Comptroller of the Pipe makes out a second Summons, which is in Nature of a *Levari*, against the Body, Goods and Lands, of the Debtor; but of this more hereafter.

About the Time of *E. 1.* there were several Tenants and Debtors that broke in the King's Debt, and indebted also to others of the King's Predecessors, and with these the annual Roll was stuffed, which made it necessary to the second Remembrancer to write them out in Charge in the Prerogative Writ, which created an unnecessary Trouble and Expence. Henceforward the desperate Debts were to be taken out of the annual Roll, and it was not necessary for the Clerk to write them out to the Sheriff, but to put them into an exannual Roll, which was one Roll

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of

of desperate Debts, which was never transcribed as the annual Roll was: This exannual Roll was read over to the Sheriff on his Appofal, and chiefly at *Easter*, when the Procefs iflued out; and if he thought any of the desperate Debts to be *Sperate*; they were tranfmitted to the annual Roll of that Year, and fo writ out in Procefs to him, and continued in Charge till they were got in, or again tranfmitted to the exannual Roll.

Reventio  
Casualis.

Attermina-  
ted Debts.

Next to the *Firmæ Majores & Minores*, was the casual Revenue, confifting of Debts of the King; and the first in Order on the Roll were the *Debita Atterminata*; these were the Debts to which the King by his Writ had assigned Terms or Times of Payment, and were the same with his other Farmers, which were at the *Utas* of *Easter* and *Michaelmas*; and these being paid in the Manner of Rents, were set next in Order to the Farms.

These



These Payments of atterminated Debts were on large Fines set, and Amerciaments assessed *secundum qualitatem delicti & quantitat' Contenementi*, the Statute of *Magna Charta* having provided *quod Liber homo non amercietur pro parvo delicto nisi secundum Magnitudinem delicti, salvo sibi Contenemento suo*; and the Reason of the Statute was, that they would not have the Feud forfeited for lesser Trespasses, as it was in Treason and Felony; and it would have amounted to a Forfeiture of the Feud, if Amerciaments and Fines were so large that they could not be paid out of the Person's Estate, without Process for the Sale of the same; and therefore when they estreated Fines and Amerciaments, which anciently were very large, Writs issued to the Court of *Exch. quer* to atterminate such Debts, and to issue an Inquisition, to inquire *quantum inde Regi dare valeat per Ann', salva Sustentatione sua & Uxoris & Liberorum suorum*; and ac-

Mag. Char.  
c. 14.

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cordingly such Debts were reduced into annual Payments, according to the annual Value of the Freehold, that the King's Debtor was seized of; *Estallments.* this was called an *Estallment*, which is an Assizing or Establishing the Times of Payments of such Debtors.

Thence common Persons were used to give Time of Payment to their Debtors; and thence arose the *Solvend'* in common Bonds, and the Notion of *debit' in presenti solvend' in futuro*, by this means drawn over to our Use from the *Civil Law*.

When the Debts were thus attermi-  
nated, if they were not paid at the  
Time, the whole was levied, because  
that when the Debts were attermi-  
nated, it was according to the Contenement  
of the Party; and if he did not pay  
it according to the Attermination, he  
plainly endeavoured to avoid the Ju-  
stice of the Law; and therefore the  
whole was immediately to be levied  
as upon an insolvent Tenant.

Next

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For

Next to the Atterminated Debts were the great Debts and known Debts; and among these were the respited Debts, which being generally the Oldest came the next on the Roll; these were anciently respited by the King's Writ, which gave Authority to the Court to delay their Payment, and so sometimes respited by the proper Authority of the Court; for as the Court might atterminate by the Statute of *Magna Charta*, so also they might *respite*, which is no more than giving Time of Payment; and this they often did, when they were doubtful whether such Debts ought to be paid or not, as where Payment had been made to the Sheriff below, which the Sheriff had not *totted*, or on shewing other good Cause, they respited such Debts till the King's Pleasure was known.

Respited  
Debts.

Madd. 655.

Next to these were *Nova oblata*, being the Debts estreated since the making up the last Year's Roll; these Debts bound the Lands and Tenements of the Debtor from the Time they

*Nova oblata.*

## An Historical View of

were of Record, *viz.* the Fines and Amerciaments from the Time they were imposed in a Court of Record, so that any Person, going to the *Rotulus Magnus*, might know how far each Person was indebted to the King, unless in Estreats for one Year past, for which they were to search the Records of the other Courts; and the Recognizances taken for the King in his other Courts were wont to be estreated into the *Exchequer*, in Order, when forfeited, that Process might issue on them.

Dallison II.  
Recogni-  
zances.

No Recognizances were taken to the King by the ancient Conservators of the Peace, nor by the Sheriffs, nor Constables; but in Cases where the Defendants wereailable, the Sheriff or Constable took an Obligation in his own Name, but not any Recognizance to the King; but the Sheriff himself bailed to appear at his own Torn, and the Constable to appear at the View of Frank-Pledge: By the Stat. 18 E. 3. c. 2. 24 Ed. 3. c. 61. Justices

Justices of the Peace were established to be appointed by the Commission of the King; and these were found so useful, that in a short Time the Name and Office of the Conservators of the Peace vanished; and those by the 3 *H. 7. c. 3.* bailed by *Recognizance* taken to the King, to appear at the Quarter-Sessions; and since 1 *E. 4. c. 44.* all Indictments and Presentments, at Leets and Torns, are to be certified to the Quarter-Sessions.

Those Obligations taken by the Constables are not now in Use, and the Justices now take Bail, by *Recognizance* to the King.

These Recognizances being only personal Securities, it became a Doubt, when they began to bind the Lands of the Subject.

Bro. Prerog. 71.

Vide hic, c. 6.

These Recognizances are transmitted, whether forfeited or not, all Recognizances for Appearances ought to be transmitted as forfeited, because it belongs to the Court (below) to know whether they appeared or not; for a Re-

H 4                      cognizance

cognizance being a Debt to the King under a Condition, does not become an absolute Debt till it is forfeited; and therefore when it lies in any other Court, it ought not to be estreated, till it appears, by the Acts of that Court, whether it is forfeited or not; therefore if a Recognizance be given for an Appearance at the Sessions or Assizes, and the Party upon being called does not appear, that Recognizance ought to be estreated, because it appears by the Acts of the Court, that the Condition is broken.

But if a Man be bound to appear at the Sessions, and in the mean Time to keep the Peace, or be of good Behaviour, and he break the Peace in the mean Time; if he appear, he ought to be indicted and found guilty before his Recognizance be estreated; for his Recognizance cannot be estreated *quia non comparuit*; and therefore there must, upon the Record of the Court, a Breach of the Peace appear, which cannot be, unless he be found  
Guilty

Guilty on an Indictment; and therefore if it be estreated before, such Estreat is irregular; but there may be Recognizances taken to the King upon other Conditions than that of appearing in Courts of Justices, and then the Condition may appear to be forfeited; and if so, the Process must go out of the *Exchequer*; and formerly they held that such Recognizance did not bind the Lands of the Subject, till 21 E. 4. 21. they were returned of Record; but by 33 *H. 8. c. 39.* it is ordered, that such Debts should bind as Statute Staple; for since these and Statutes Merchants were allowed, by former Statutes, to bind the Lands and Tenements from the Time of making them, though contracted in private, and not of Record, they thought it reasonable the King should have the same Privilege as private Persons; since the King's Recognizances, though taken before Justices, are to be returned of Record the next Quarter-Sessions; and after they are become forfeited, they  
are

## An Historical View of

are estreated by the Sessions into the *Exchequer*.

And since Recognizances were taken, both in the Court of the *King's Bench*, and *Common Pleas*, and *Chancery*, which do not appear on the *Rotulus Magnus*, till they are forfeited and estreated into the *Exchequer*; yet that being of Course done in a short Time, there did little Prejudice accrue to the Subject, by not seeing the whole Charge of the King's Debt on the *Rotulus Magnus*.

And when such Recognizance or Bond is returned into the Court of *Exchequer*, if there be a Warrant of Attorney to confess Judgment, Judgment is immediately confessed to the King, and on such Judgment the Process issues, as on other ordinary Judgments of the King; but if there be no Warrant, then a *Scire facias* issues, and the King has Judgment on the *Scire facias* or 2 *Nichils Returned*.

All Courts of Record, where the Fines are not granted away by Letters Patent,



Patent, transmit their *Eſtreats* to the Lord Treafurer's Remembrancer's Office ; and theſe, with thoſe Fines and Amerciaments that are impoſed in the *Exchequer*, in the King's Remembrancer's Office, and Clerk of the *Pleas Office*, were delivered to the Clerk of the *Pipe* formerly, who put them amongſt the *nova oblata* on the great Roll.

But towards the Reign of *Ed. 3.* the caſual Revenue being ſo much increaſed, that the Clerk of the *Pipe* could not tranſcribe and ingroſs them all on his Annual Roll, and many of them being ſmall and paid on the firſt Demand, it was neceſſary to make them Part of an Annual Charge in the ſame Manner as the other Annual Revenue of the King was ; therefore a new Officer was invented, *viz.* the Clerk of the *Eſtreats*; and inſtead of delivering ſuch *Eſtreats* of the *Exchequer* and other Courts, to the Clerk of the *Pipe*, it was henceforward delivered to him, and he iſſues a Diſtinct

distinct Process from the Summons of *Pipe*, viz. the Summons of the *Green Wax*, which though it be almost in the same Words with the Summons of the *Pipe*, yet it is different in the Charge; for the casual Revenue is only charged in the Summons of the *Green Wax*.

And Foreign  
Apposer.

There was likewise a new Officer, before whom the Sheriff was to account on his Process, who is called the Foreign Apposer; perhaps he was called foreign, because he was Apposer in Court, or rather because this was a foreign and distinct Account from that of the Great Roll, which was carried on by itself; the foreign Apposer sends the Debts *Nichil'd* by the Sheriff, to the Clerk of the *Pipe*, which then being presumed to be Debts that will stand out some Time, are by him entred on the Great Roll, and he sends out the second Process of the *Pipe*; because having already been on Process on the Summons of the *Green Wax*, it has answered *Mag-*

*na Charta*, c. 8. by which no Sheriff or Bailiff shall seize Lands for the King's Debts, so long as the present Goods and Chattels of the Defendant shall suffice, and the Debtor be ready to satisfy the same; and the Pledges of the Debtor shall not be distrained, as long as the principal Debtor shall be sufficient.

In *Ireland*, instead of the Clerks of the *Pipe* and *Estreats*, they have an Officer, who makes out the first Process, whom they call the *Summonitor*; and he receives the Answer of the Sheriff in Court, as the Clerk of the *Pipe* likewise; and the *Nichils* are to be entred on the Great Roll, and the Comptroller of the *Pipe*, who has a Duplicate of that Roll, issues out the second Process of the *Pipe*, and then they proceed as in *England*.

## C H A P. VI.

*Of Debts to the King, how recovered, &c.*

ALL Debts to the King bind from the Time the same are contracted; for the Debts that were of Record always bound the Lands and Tenements, and the Debts not of Record, by the 33 *H.* 8. 39. bind as a Statute Staple; for all Lands being held mediately or immediately from the King, when therefore any Debt was recorded of any Person, it laid the Estate as liable to such Debt, as if it had been a Reservation on the first Patent; and therefore as the King could seize for the Non-payment of the reserved Rents, so he could seize the Lands for any Debt with which the Lands were charged; but the Lord giving out any Tenure for Knt.'s Service

## the Court of Exchequer.

III

Service or other Service, could not seize for the Non-performance of such Service, as they did amongst foreign *Feudists*, because the King had an Interest in such Service; for since the Baron was to come, attended with so many Knights, the King had an Interest in the Vassals who were to attend him; and therefore Lords were not permitted to seize the Feuds of their Tenants, but to distrain them for the Service reserved; in the same Manner, if a Debt was recovered by the Lord in his Court-Baron, he could only order the Bailiff to levy that Debt by Distress; but he had not the same Remedy for the Debt recovered in his Court, as he had for the Rent annexed to the Land; and therefore as the King, who had the eminent Dominion, could seize for the Non-performance of the Tenure, as the Lord of the *Feud* had by the *Feudal* Law; so whenever he had charged a Debt on his Tenant, he had the same Remedy as on an original Reservation;

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and

and therefore the King having a Right to seize for the Reservation, had likewise a Right to seize for the Debt; but the Lords having no more than a Right to levy on the Goods, and not a Right to seize the Land itself, the Debt to the Lord did not bind the Land, as the Debt of the King did, which subjected the Lands to a Seizure from the Time it was on Record: But Goods were bound at Common Law from the Test of the Writ, whether it was a *Levari* or a *Fieri facias*, because otherwise the Debtors by Alienation of the Chattels might disappoint the Executions of their Lords; who having by their Process a Right to distrain Goods, there arose a Lien on the Goods from the Time the *Levari* was taken out; and the King's Prerogative could not be less than the Right of the Subject, and therefore bound the Goods from the Teste of the Writ; but this was found inconvenient; and therefore by the 29 C. 2. cap. 3. No Execution shall bind the

Pro-

Property of Goods, but from the Time of the Delivery of the Writ to the Sheriff. Vide *Tit. Execution, fol. 99. c. 4.*

But this Act seems not to extend to *5 Mod. 377.* the King, for an Extent of a later Teste supercedes an Execution of the Goods by a former Writ; because by the King's Prerogative at Common Law, if there had been an Execution at the Subject's Suit, and afterwards an Extent, the Execution was superseded, till the Extent was executed; because the Publick ought to be preferred to the private Property; and the rather because the King is supposed by publick Business, not to be able to take Care of every private Affair relating to his Revenue, and therefore no Time occurs to the King; and if he was to be prevented of his Execution, by another Person coming in before him, Laches must be imputed to him, which the Law does not allow; and since the King's Debt is prefer'd in the Execution, therefore an Executor is obliged

I

liged by the Law to pay the King's Debt on Record, before Debt on Record to a Subject.

If the King's Debt be *prior* on Record, it binds the Lands of the Debtor, into whose Hands soever they come; because it is in the Nature of an original *Feudal* Charge on the Land it self, and therefore must subject every Body that claims under it; but if the Lands were aliened in Whole or in Part, as by granting a Jointure before the Debt contracted, such Alienee claims *prior* to the Charge and therefore it is not subject to it.

Mo. 126.

Curson's  
Case, 3 Leon.  
239, 240. 4  
idem 10.  
2 Roll. 156,  
7, 8.

But if the Subject's Debt be Statute Staple or Judgment, and *prior* to the King's Debt, and the King first extends the Lands, the Subject shall not by any after Extent take them out of his hands; but if such Judgment be extended, and the Subject has the Possession delivered to him by a *Liberate*, he shall hold it discharged from the King's Debts; but if the King's Extent comes before the Possession by *Liberate*,



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*Liberate*, the King's Extent shall be preferred, and the Subject must wait till the King's Debt be satisfied; the Reason is, because the King's Debt is in Nature of a *Feudal* Charge, which if it comes on the Lands before the Property of them is altered, it seizes them as it might for the original Service at first imposed; but if there had been a lawful Alienation of them before such Debt, there it is not the *Feud* of the Tenant, and therefore such Charge cannot affect it; therefore if there was a precedent Judgment or Statute Staple, and *Liberate* pursuant before the King's Extent comes down, there it cannot charge the Lands; because the Property is altered by the Extent of the Subject, which relates to the Time the Judgment was first given, or Statute Staple acknowledged; because such Extent or *Liberate* of the Subject was only an Execution of such Judgment or Statute on the Land, and the Execution was relative to that Judgment which was *prior* to the

## An Historical View of

King's Charge; and so there was a compleat Alteration of Property, *prior* to the King's Charge before his Extent came down; but if the King's Extent had come before the *Liberate*, he thereby charged the Lands whilst they were in the Hands of his Debtor, and then this Charge would be satisfied, as if it had been in the first *Feudal* Donation; for nothing can hinder the King's Charge which comes on the Lands, as if it had been settled in the first *Feudal* Donation, but what amounts to a precedent Alienation, in which Case they are not the Lands of the Debtor; and the *Feudal* Charge is only laid on the Lands of the Debtor; and if such Lands were not his Debtor's Lands, they are not subject to that Charge; and a *Liberate*, in Pursuance to a precedent Judgment, amounts to an Alienation of the Land itself, before it became charged to the King.

Note also; the Lien upon the Lands of the Subject's Debts came in by the  
Statute

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Statute of *West.* 2. for before that, the Judgment did not bind the Land; but the King's Debt bound the Land before the Statute, but the Statute does not touch the K.'s Prerogative; and therefore the K. has a Power to levy on the Lands, notwithstanding the preceding Lien by Judgment, whilst the Lands are in the Custody of the Law on the *Elegit*, or Extent, before they are actually delivered out to the Officer by the *Liberate*, as a Satisfaction for his Debt; but when they were actually delivered out to the Officer by the *Liberate*, they then no longer belong to the Debtor, since the King's Writ had delivered them over for Satisfaction of a Debt, that was preceding to the King's; for the Creditor did not take them under the Burden of the King's Debt, because his Lien was antecedent to the King's Debt; and it were repugnant to construe him to take the Land *sub onere* of the King's Debt, when he took it in Satisfaction of a Debt precedent.

See Mr. Strange's Argument in Gilbert's Reports, p. 97.

Curson's  
Case, 3 Leon.  
239, 240.  
4 Idem 10.

If a Judgment be owing by *A.* to *B.* and *A.* afterwards enfeoffs *C.* of his Lands, and then *B.* assigns his Judgment to the King, in this Case the King shall extend but a Moiety of the Lands in the Hands of *C.* but if *B.* had assigned the Judgment to the King before *A.* had enfeoffed *C.* the whole Lands had been lyable; for the King has the Prerogative to extend the whole Lands of the Debtor for his Debt; but the Feoffment being made to *C.* before the Assignment of the Judgment to the King, the Lands of which *C.* was enfeoffed, were never the Lands of the Debtor; for they were the Lands of *C.* before *A.* became indebted to the King; and therefore the Prerogative of the King, which makes it a *Feudal* Charge, never affected those Lands; but they are subject to the same Lien to which they were when it was only the Debt of *B.*

Magn. Rot.

The great Roll consisted of the Particulars herein before mentioned, and  
was

was made up by the Clerk of the Office, upon the Sheriffs bringing in their Accounts, the new Sheriffs were constituted in *Michaelmas* Term, and in *Hillary* issued the first Summons of the *Pipe* and of the *Green Wax*; those contained the *Corpus Comitatus*, and the Farms that were in Arrear the former Year; and the *Green Wax* contained the Casualties that had been estreated before *Hillary* Term, and on these Writs the Sheriff answered to each Article, given him in Charge on the rest of these Writs at the *Utas* of *Easter*, and the Answer of each Sheriff was writ down on a (distinct) Roll, and these Rolls pack'd together made the Roll of that Year; so that the the Rolls ran in the Words of the present Tense, because the Sheriff did not render the Account which was marked *R. C.* or *C. R.* upon each Particular charged in the Writs; so that on the first Writ he accounted for the *Oblata* of the preceding Year; but the *Nova oblata* did not come on

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the great Roll till the *Utas* of *Michaelmas*, because the Sheriff did not answer in Court, touching these *Oblata*, till the second Process; but the foreign Apposer touching and casting up what was *totted*, sent it to the *Pipe*, and a Schedule was made of what was *Nichil'd*, and is called *Schedula Pipe*; and this was transcribed by the second Remembrancer in his Book, which was also called *Schedula Pipe*; and from hence the second Summons of the Pipe was made, and on the Return of the second Summons, the Sheriff was to answer to the *Nova oblata* of his own Year.

Towards the Time of *H. 7.* and *H. 8.* as the Revenue increased, Merchants were obliged to make Payments, the Customers and Collectors received Bonds from the Parties to the King; these Collectors were no more than Bailiffs or Receivers, and not as Justices between the King and the Party, and therefore the Acknowledgments before them were not in a Court

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Court of Record; and there was before the 33 *H. 8. c. 39.* a Difference between them and Bonds, that these were immediately levied by the *Levari*; but these Debts not of Record, could not be levied by a *Levari*, but a *Sci' fac'* was to issue thereupon; and the Reason of the Difference is, that where an Obligation is acknowledged in a Court of Record, such Recognizance is the same as a Judgment, the Conusor is personally present, the Court is supposed to know him as such a Defendant, against whom they give Judgment; and hence it is that the *Levari* issues, and all the other Prerogative Process; and that Debt cannot be discharged, until there be a Receipt upon the Record; but where the King's ministerial Officer takes an Obligation to the King, such Obligation is not of Record; and when the Officer delivers such Obligation into Court, the Time of the Delivery is recorded; so that if that Obligation be just, and the Conusor hath

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hath nothing to say against it, no Body can controvert the Time of his Lien, because the Delivery is of Record; and therefore it ought to bind from that Time.

But the Obligation is no more than a Warrant of Attorney, for the Ministerial or other Persons to declare it of Record; for being an Act in *Païs* and not of Record, the Conusor may come in upon the Return of the *Sci' fac'*, and traverse the Obligation; but in this it differs from a Warrant of Attorney; for if a Man forge a Bond and Warrant of Attorney, and then confesses Judgment, the Defendant can never deny the Deed, if a *Sci' fac'* issues after a Year and a Day; but in this Case there was no Judgment upon the Bond; for the Bond is only delivered of Record, and therefore the Judgment upon the Bond arises only upon the *Sci' fac'*; and therefore in *Ireland*, they often take a Warrant of Attorney to confess Judgment upon such Bond in an Action of Debt; and when such Judgment



ment is entred, it is a Matter of Record, and cannot be discharged but by an Act of equal Notoriety; and the Practice here in *England* before the 33 *H. 8. c. 39.* was the same with the *Irish* Practice, (where that Statute is not in Force) and is therefore here proper to be recited.

When the Solicitor for the Crown had Directions to sue upon the Bond, only he lodges the Bond in the chief Remembrancer's Office, and immediately a *Sci' fac'* issues thereon, either to the proper County, or two *Sci' fac'* to the City of *Dublin*, which are called first and *alias Sci' fac'*; all this is done of Course; if the Sheriff returns *Scir' feci* thereon, then upon filing it, the Court gives the Party twelve Days to plead by entring three Rules *viz.* four Days to plead, four Days *ex gra'*, and four Days *ex uber' gra'*, the last of which is only moved in Court, and is for Judgment *ab/q*; Motion, if no Plea in four running Days; and if the Party does not plead with-

in

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in the Time, a *Levari fac'* issues for the full Penalty of the Bond.

If the Party pleads, then the like Trial and Proceedings as in other Courts.

If the Sheriff returns two *Nichils*, then upon Motion the Court gives but four Days peremptorily for the Party to appear and plead; which if he neglects to do, a *Levari facias* issues as above.

The Judgments in both these Cases are made up as Judgments by Default at Law, and the Form of the *Sci' fac'* is.

*Georgius Dei gratia Magnæ Britan' Franc', & Hibern' Rex, fidei Defensor, &c. Vic' Com' Civit' Dublin sal'tem. Cum Johann' Walker & Chamberlain Walker, alias John Walker of Ginteen in the County of Kilkenny, Esq; and Chamberlain Walker of the City of Dublin, Esq; per Script' eor' obligator' geren' dat' octavo Die Martii Anno Domini 1714. Sigill' su' sigillat', & fact. apud Civit' Dublin*

*lin in Paroch' Sanct' Mich' Arch'i in  
Ward' Sanct' Mich' in Com' ejus-  
dem Civit', & in Offic' capit' Rem'  
nostri Sc'ii in Hibernia jam reman-  
nen' de record' tenentur nobis in sum'  
Ducent' & Septuagint', & Sex Libr'  
Ster' solvend' ad certum diem jam  
præterit', & eas nobis nondum solver'  
nec alter eor' solvit nec solvi fec', ut  
dicitur: nosque de dict' Ducent' Sep-  
tuagint' & Sex Lib' Ster' nobis jam  
debit' omni celeritat' qua poter' satisfac-  
cer' volent', ut est just', vobis igitur  
nunc præcipim' quod non omit' propter  
aliquem Libertat' in Ball' vestra quin  
eam ingred', & per probos & legal'  
hom' de Ball' vestra Scir' fac' Jo-  
han' Walker & Chamberl' Walker  
quod sint cor' Baronibus de Sc'io  
nostro apud the King's Court Dublin  
-----prox' futur' ad Ostend' & propon',  
siquid pro se habeant vel dicere sciant,  
quare nos Execution' versus eos pro  
præd' Ducent' & Septuagint' & Sex Li-  
br' Sterl' h'ere non debemus; & h'eat'  
ibi tunc nomina eor' per quos eis Scir'  
fac'*

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*fac' & hoc breve. T. Jeffer' Gilbert  
Arm' Cap: Baron' Scaccarii nostri  
præd' apud le King's Court præd'  
die anno regni nostri  
quart'.*

Temple Regist' Regis.

If a Bond with a Warrant of Attorney be entred into, the Warrant is brought to the Officer, who enters a Consent in his Book of Judgments, that Judgment be forthwith entred up for his Majesty, and that Execution may issue; in this Case there is a *Scire fac'* made out, signed by the Officer, and filed, but never sealed, which is first inrolled, and is in the Nature of a Declaration at Common Law, and the Judgment made up as those in the Plea Side by *Cognovit Action'*, because they would not stay the Return of the *Scire facias* to Delay the King's Execution, nor clog the Rolls with two Writs, and two Returns from the Sheriff; but when Judgment is given in Debt, there may be a *Levari* immediately, because

because it is an immediate Execution of the King's Judgment; and the taking out *Scire facias* proceeds from Ignorance of the Clerks in taking out such *Scire facias*, as if only a Bond had been sued, and there had been no Warrant of Attorney to enter Judgment.

But with us those things are set upon another Foot; for the Bonds in *Pais* are by 33 H. 8. c. 39. made Statute Staples, and therefore the Lien is from the Time of the Acknowledgment; and the *Levari* may at any Time issue, within a Year after the Day that the Money in the Obligation is payable; but if they exceed the Year, then there must be a *Scire facias* as in the Case of Common Statute Staples; and the Reason why they were in the Statute made in the Nature of Statute Staples, is because they were Pocket Securities when taken by the Officer, who is not a Person authorized to make them of Record; but that the King's Revenue might not suffer

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by the Negligence of the Officer in bringing them up to enter of Record, they were Liens upon the Estate from the Time they were taken by such Officer, and they thought it reasonable to make Pocket Securities to be Liens upon a Man's Estate, as well in Behalf of the King's Revenue, as in Behalf of a Merchant.

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### C H A P VII.

*The Duty of the several Courts and their Officers, with Respect to Estreats into the Exchequer, and first of the Chancery.*

Bur. of the  
Exch. 148.

**T**HE King's Chancellor for the Time being, causes the Clerks of the Chancery, to whom it doth appertain, to inroll, or cause to be inrolled distinctly,

distinctly, and plenarily, in the Patent Rolls of the Chancery, all and singular Charters; Letters Patent; Writs Patent, Writs Close, Commissions, Licences and Pardons of Alienations, Licences; *Ouster le mains*, Writs of *Diem clausit extremum*, *Man' amoveas*, *Qui plur'*, and all and singular other Writs, Acts and Instruments which pass under the Broad Seal, whereby any Farms, Fee-Farms, Rents, Services, Debts, Accounts, Fines, petit or gross Issues, or Amerciaments, Homages, Fealties, or Relief, Reventions, or other Profits or Commodities, are reserved or may accrue to the King's Majesty, before the same Charters, Letters Patents, or other the Premises shall be delivered out of the Hanaper of the said Chancery.

Then the Master of the Rolls yearly, from Time to Time, transmits in Estreats of Parchment Prest Writ, in a conform Measure, and of one Size, written on the one Side only, all and singular the said Charters, Letters Patents,

Madd. 707,  
708.

## An Historical View of

Writs and other the Premises out of the said Patent Rolls, and the same Estreats the said Chancellor, or the said Master of the Rolls for the Time being, shall deliver in their own Persons Yearly to the Barons of the *Exchequer*, in the Terms of *Michaelmas* and *Easter*, for Execution and Process to be had and made thereupon for the King.

After the Receipt of the Estreats of Chancery by the Hands of the Chancellor, or Master or Keeper of the Rolls, the chief Remembrancer of the Exchequer shall take the same Estreats by the Delivery of the said Barons, and shall number the Number of the Prests of the same, and shall endorfe the last of them in this Manner; *Hunc librum sive Rot'um continen' Membran' . . . . . liberavit hic: A. B. . . . Cancellar' Domini Regis . . . . Die . . . . Anno Regni ejusdem Domini Regis . . . . pro Execution' inde ad opus Domini Regis Fiend'.*

And



## the Court of Exchequer.

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And after that he shall File, and strictly bind all the said Prests together in one Head, with a good Sirple or Ferrel of Parchment; and then he shall mark every Roll thereof with Numbers, *viz.* I. II. III. and so forth, in every Roll of the same Estreats wherein any Matter doth commence, and is not depending wholly upon the preceding; and then he shall indorse the said Sirple in this Manner and Form, *scilt.* . . . . . *Original' de Anno . . . . . Regis nunc, &c.* and sign it with *his Name.*

These Originals were the old Basis and Foundation of the Process of the Court of Exchequer; and as the Original Writs in the Court of Chancery directed into the Common Pleas were the Foundation of all the Civil Business; so the Originals out of Chancery were the great Foundation of the K.'s Court of Revenue in the Exchequer; and this Roll was to be a Charge to the Sheriffs and Escheators for that Year; and immediately upon this Roll there

K. 2                      was

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was Process made out for the getting in all Manner of Debts and Duties contained in the same.

This is the Way of Dealing with the Executory Part of the Revenue; for they did not transcribe that upon the *Rot'us Magnus*, because it was no Part of the Standing Revenue, and therefore the Roll was made by the King's Remembrancer from the Estreats of the Chancery, and Writs were to issue to the several Officers to get in the Revenue, but the Writs themselves were made out of the Remembrancer's Office upon the Roll, and upon these Writs the Sheriff answers in open Court before the Barons, and the Escheators before a Baron and an Auditor.

See the Case of the Warden and Commonalty of Sadlers, 4 Co. 54, 55, &c. and 10 Co. 115.

There were two Sorts of Offices, one of *Intituling*, and another of *Instruction*. The Office of Intituling was always by Inquisition found by Commission under the Broad Seal, for the King could not take but by Matter of Record, no more than he could give

give without Matter of Record; and this was a Part of the Liberty of *England*, that the King's Officers might not enter upon any other Man's Possession till the Jury had found the King's Title; therefore where the King's Title appeared of Record, his Officers might enter without any Office found. As where the Lands are held of the Crown, and the Tenant dies without Heirs, the Officers of the King may enter, because the Tenure is upon Record whereby the King's Title appears; so by the Common Law, where the Land belonged to no Body, the King's Officers may enter, because by the Law the Land is in the Crown, for the Law intitles the King where the Property is in no Man; but if any Body else is in Possession, the Lands cannot be devested without Matter of Record, and where the King is intitled by Matter of Record, there is no need of any Office to intitle him.

## An Historical View of

The Offices of Instruction settled the Annual Value of Lands, and by that Value the Escheator accounted, unless the Court, by putting it up to Auction, found any Person that would give more for the Land, and then they let it by Lease under the Exchequer Seal.

But by the Statute 1 *H. 8. c. 10.* if any Body will pretend Title, and come in and traverse the Office, and find good Securities, then he shall have the Lease of the same Lands.

*Brevia Scaccarii.*

This begat the usual Process in Seizure of Goods; for when the Officer had seized, if the Port be not One hundred Miles distant from Town, he is to take out a Writ of Appraisement in fourteen Days, and on this Writ of Appraisement they return the Value of the Goods, as it is found by the Jury; but upon the Return of the Writ of Appraisement the Goods are set up to Cant, lest they should not be appraised according to the true Value; and if any Claim were put in, and the

the Goods were unfold, the Claimer was permitted to have a Writ of Delivery, upon giving Security to answer the Value of the Goods. And thus the Practice touching personal Things is conformable to the ancient Practice touching real Estates.

## C H A P. VIII.

*We now come to the Casual Revenue.*

AND that arose out of Fines and Amerciaments. The Fines were properly set in Criminal Proceedings, and were estreated by the *King's Bench* and *Justices in Eyre* into the *Exchequer*; the Fines were set by the Court as Ransoms from Imprisonments, and the Amerciaments by *Mag. Charta* were to be assessed, and these were to be set in the *Common Pleas*

*See Cotton's Records, p. 15, 40, 86, &c. infra.*

in Civil Actions, either on the Plaintiff for false Clamour, or on the Defendant for detaining a just Debt ; these Amerciaments were delivered over by the Clerk of the Warrants to the Clerk of the Assizes, who used to deliver them to the Coroners of the County, who assereed such Amerciaments as indifferent Persons of the Neighbourhood elected by the whole County ; and after the Coroners had assereed such Amerciaments, they delivered them back to the Clerk of the Assize, and he delivered them to the Clerk of the Warrants, and from thence they were *estreated by the Judges into the Exchequer*: But the Judges of the *King's Bench* having a Civil Jurisdiction over their Prisoners, they were wont to order Amerciaments, and sent them down to be assereed ; and so the *Common Pleas* in Actions of Trespass, which were *Vi & Armis*, set Fines on such Trespassers, which were estreated into the *Exchequer* without any Asserment.

See Cotton  
supra, p. 86,  
112, 127,  
&c.

But from the Time that Justices of the Peace were appointed, the casual Revenue very much increased; and this was by 1 *E. 3. c. 16.* before that Time Indictments were found at the *Torn* before the Sheriff, and he issued his *Capias*; but after the Justices of Peace were appointed, the Justices issued their Warrants in Order to apprehend the Offender; for being assigned to keep the Peace in each Particular County, they could issue their Warrants in order to take up an Offender; and if it were a Bailable Offender, they bound him over by Recognizance, either to appear at the Assizes or Quarter-Sessions, and likewise bound over the Evidence to prosecute; and if the Prosecuted or Prosecutor did not appear, such Recognizance was forfeited, and the Clerk of the Sessions, or the Peace, respectively, estreated such Recognizance into the *Exchequer*.

This so increased the Casual Revenue, that the *Comptroller* of the *Pipe* could

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could not undergo the whole Work; and therefore a new officer, intituled the *Clerk of Estreats*, was introduced to write the Summons of the *Green Wax*, in Assistance of the *Comptroller* of the *Pipe*; so that the Summons of the *Green Wax* was *totidem verbis* with the Summons of the *Pipe*, only issued by a different Officer, and the Charge of the casual Revenue is annexed to such Summons of the *Green Wax*.

When it issues to the Sheriff, the Sheriff is to levy the same; and the Sheriff, upon his Process of the *Green Wax*, is to account before the foreign Apposer, which foreign Apposer was instituted at the same Time with the Clerk of the Estreats; he was called Apposer for the same Reason that such Accounts of the Sheriffs are called *Apposals*, (*i. e.*) because the Sheriff was then to *Apponere*, or place his *Items* to account, and the Sheriff before such Apposal did *Tot*, *Nichil*, and *O' ni'*, according as the Case required.

This



This Officer was called the foreign Apposer, because the Account on which he sat was called the foreign Account; for the Account of the certain Revenue was the original Jurisdiction of the Court of *Exchequer*, and belonged to that Court, from the Original sent from *Chancery* into that Court; but the casual Revenue did not arise out of such Originals, but was sent into the *Exchequer* by *Estreets* out of other Courts, and therefore was called the foreign Revenue.

If any Lords of Leets or Liberties claim any Fines and Amerciaments, they are to appear before the *foreign Apposer*, at the Time when the Sheriff is apposed, and there they must claim such Fines and Amerciaments as belong to them; and if their Claim be allowed, such Fine is set off to the Claimer.

## C H A P. IX.

*We come now to the Receipt of  
the Exchequer.*

WHEN any Man pays in Money into the *Exchequer*, he pays the Sum to the Teller, and the Teller makes a Bill in Parchment for the Sum so paid, in which is the Christian and Surname of the Party, his Office, and the Day of Payment, and the Sum so paid wrote in Numeral Letters; this Bill is rolled up and thrown down through a Pipe into the Tally Court; then the Tally Cutter prepares the Tally, which is notched according to the Sum mentioned in the Bill, *viz.* a greater Notch for (*M.*) and a lesser Notch for (*C.*) a lesser Notch for (*X.*) and so a lesser Notch for single Pounds, and for Shillings and Pence;  
the

the Tally is but slightly cut with the Knife.

Then the Auditor of the Receipt, who was anciently called the *Receptor talliar*', writes a Duplicate upon the Wood of the Tally, of the Contents of the Parchment Bill, and the Sum (which is writ in the Numeral Letters upon the Bill, and is expressed by Notches on the Tally.) Then the Clerk of the Pells enters the Bill into his Book, and the *Scriptor talliar*' reads the Tally; the Clerk of the Pells at the same Time looking into his Book, to see that his Entry and the Tally agree together; and then the Chamberlains strike the Tally, that is, divide it into two, and the Tally or the Stock is given to the Party, and the Foil or Counter-part is left with the Chamberlains, and the Bill is carried away and filed by the Auditor of the Receipt.

In this Manner of Accounting there are several Things to be observed; First, that the superior *Exchequer*, which charges

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charges the Accountant, is perfectly distinct from the inferior *Exchequer*, where the Money is paid in, by which he is to be discharged; and the Reason of this is, that there may be no Collusion to charge or discharge the Accountant for less than what is due; for if he were to *tott* at the same Place where he pays, there might be a Collusion with the Accountant; therefore when he pays in at the Teller's Office, the Teller makes out a Bill, as a Warrant for the Accountant's Tally; and the Teller sits apart from the Tally Court, because the Tally is to be charged upon the Teller for the Money; and therefore it is, that the Auditor takes away the Bill with him in Order to charge the Teller; and the Chamberlain takes away the Foil or Counter-Talley, in Order to check the Discharge of the Accountant; for the Accountant must come to the Chamberlain's Office, and get his Tally joined, and that is markt by punching, and sent up by a Messenger into  
the

the Pipe, and is there kept by the Pipe, as a Voucher for them, to allow the same in Discharge of the Accountant; so that as the Tally, and Counter-tally, check the Discharge of the Accountant before the Account is made up; so they are Vouchers to the Pipe, in allowing that Discharge to the Accountant.

Money was never issued on the Great or Privy Seal; and anciently there were no Writs of *Liberate* for the Payment of Money on any Debt due from the Crown, or any Grants made of any Sums; but afterwards they were wont to grant Patents or Privy Seals to the Treasurer, giving him Authority to issue Warrants for the Money.

The Writs were anciently directed to the Treasurer and Chancellor; and therefore the Warrants are at present signed by the Treasurer and Chancellor, and mention the Authority of the Broad Seal, by which he issues them.

## An Historical View of

These are entred and recorded by the Auditor, and he draws his Bill upon the Teller; then these are entred in the Office of the Pells on the *Pellis exitus*, and go from thence to the Teller, where the Money is paid.

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### C H A P. X.

*We come now to the Sheriff's Accounts.*

Of the Antiquity and Dignity of Sheriffs.

See Præf. ad

3 Co.

4 Co. 33.

5 Co. 92.

The Manner of his Charge and Discharge.

3 Co. 72.

4 Co. 33.

9 Co. 97.

THE Sheriff is the King's Bailiff of his County, and there were several Farms of the County that were under the particular Care of the Sheriff, (as is herein before mentioned) that is to say all those Farms that were held of the King as of his County; these were under the Survey of the Sheriff, and he was charged with them, being obliged to answer them in all Events; and for them he pays  
in

in his Profers, because they were reckoned Part of his Bailywick.

The Lands of the Tenants *in Capite*, if they held by Knight's Service, generally speaking, answered no Rent; but the Escuage, when it was assessed, was gathered by the Sheriff, unless where the particular Lords paid in their Escuage, and had a Commission for gathering it on their Tenants.

As to the Tenants in Ancient Demefne, and Socage Tenants, they generally paid in their Rents themselves, as being immediate Farmers, and accountable to the King; and if they were in Arrear, it seems that the King's Remembrancer issued the *Distingas* against them, and further Process, because they were immediate Accountants to the King.

If any Body held Lands of the King as *de honore* of any particular Place of the King's, the Lord of that Honour or Manor gathered the Rents, and accounted for them in the *Exchequer*.

See 1 Co. 42.  
5 Co. 57.

If any of the Lands within the County *escheated*, anciently the *Escheator*, till restrained by the Statute, might hold an Inquisition *virtute Officii*, and thereby enter into the Lands, and as we have said, was charged with the Profits of them.

But either the Sheriff or Escheator might give Information in *Chancery*, and take Inquisitions *virtute Br'is*; and he, that gave first the Information, generally had it under his Survey, and therefore the Sheriff and Escheator lay upon the Watch to retain Lands, and take out such Inquisitions; but however, they held the escheated Lands no longer than until a Bailiff was appointed, and at the Appointment of a Bailiff, he was accountable to the Crown; and he paid in that particular Rent by Tally, and obtained a *Quietus*, in the Manner as Sheriffs and other Accountants.

The Sheriff is a Patent-Officer of the Crown, and is constituted the King's Bailiff to gather his Rents; and there-



therefore after the said Constitution, the first Thing is to prefix him a Day to account, and there were two Days prefixed, one after the *Utas* of *Easter*, and the other after the *Utas* of *Michaelmas*; and these were called his Profers, because he then did profer the King's Rents; they gave him two Times in a Year, because the Rents were generally payable half-yearly. It is the Duty therefore of the Sheriff to come at the Day of Prefixion, and if he does not, he is considered as an Accountant in Default, and therefore a Fine of *5 l. per Diem* is set upon his Head for four Days together to bring him in; and if he do not come in at the End of the fourth Day, then an Attachment *fi. fac'* and *Cap. in manus nomine distriction'* issues against his Body, Lands and Goods, and these issue to the Marshal of the Court, in order to bring him in; but what Goods are taken, or what Profits of Lands are seized, are forfeited to the King till he comes

## An Historical View of

in to account, and do not go in Discharge of his Debt, but are Pains to make him account, and must be compounded by the Sheriff.

The Reason of this Proceeding is, because the Prefixion of a Day is in Nature of a Summons for him then to appear, and when he is proclaimed upon Pain for four Days after, which are in Nature of Days of Grace, then he is presumed to have the King's Money in his Hands, and to have gone off with it, and therefore all the Process is to be made against him, as against an Accountant that had been summoned.

They give Security to answer their Profers, and all other the Profits of the Sheriffficks, before their Patents are made out, but they do not sue the Security, unless there is a Deficiency in the Sheriff's Effects. If the Sheriff keeps his Day of Prefixion, he is then to pay in his Profers, and to be apposed before the Barons, on the Writs that issue from the King's Treasurer's Remem-

Remembrancer to get in the King's Debts; and upon the Prefixion at *Michaelmas*, he is charged before the Cursitor Baron on the Summons of the Pipe, for all the Farms that belong to his County; and these were called *Vicontiel* Rents, or the *Corp' Comitatus*, or the *proficua Comitatus*; but the Clerk, to save the Expence of Time and Pains, instead of writing several little Rents in Charge, writ a gross Sum *de Corp' Comitatus* 100*l.* & *de numero Comitatus* 50*l.* as is herein before-mentioned, so that there was one Sum charged upon him, and the Sheriff accounted for the particular Rents, that made it up, by a Roll which he kept in his Custody; the Rents which were to be accounted *numero*, were anciently reserved in Fine Silver, and therefore they gave so much more in Tail, *viz. in Com' Bed. & Buck.* 13 *E.* 3. *Nic' passe len' de* 18*l.* 4*s.* 4*d.* *Numero pro* 17*s.* 7*d.* *Blanc,* *Hale* 29. and this Negligence in the

## An Historical View of

Clerk was the Lofs of many Rents to the Crown; but in *Norfolk*, where the Rents were greater, they wrote the particular *Vicontiel* Rents in Charge, and so they remain on the Pipe-Roll to this Day.

The Sheriff pays in Profers to the Value of the County Rents, because these he must *tot* or *O' ni'* before the Curfitor Baron, and he cannot here *Nichil*, because the Lands might be seized into the King's Hands, and out of the Profits and Issues the Rent might be answered, and the Sheriff is looked upon to farm the Rents, and therefore is obliged to pay them into the Crown, but he may *O' ni'* these Rents; for if the King grants any of them, he may shew the Record in his Discharge; and all these Rents being within the Survey of the Sheriff, he must acquit them below on Receipt of the Rents, for the Sheriff as Farmer of the County was answerable for them.

As

## the Court of Exchequer

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As to the Sheriff's *Discharge*, first See 3 Co. 72°  
4 Co. 33.  
9 Co. 97. he may discharge himself by an *O'ni'* (*i. e.*) by Order of Court upon any particular Article, or by shewing the King's Great or Privy Seal, discharging it out of the Account.

*F I N I S.*

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